IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

In The Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

Nos._____

CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., Respondents.

Nos._____

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., Respondents.

Nos._____

MISSISSIPPI VALLEY TRUST COMPANY, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., Respondents.

Nos._____

HARRIS TRUST & SAVINGS BANK, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., Respondents.

Nos._____

THE NEW YORK TRUST COMPANY, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., Respondents.

Nos._____

RECONSTRUCTION FINANCE CORPORATION, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., Respondents.

On petitions for writs of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

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IN THE

United States Circuit Court of Appeals

For the Seventh Circuit

In The Matter Of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
Debtor.

CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY,
Nos. 5115 and 5159 *vs.* *Appellant,*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL.,
Appellees.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
Nos. 5116 and 5160 *vs.* *Appellant,*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL.,
Appellees.

MISSISSIPPI VALLEY TRUST COMPANY,
Nos. 5117 and 5161 *vs.* *Appellant,*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL.,
Appellees.

HARRIS TRUST & SAVINGS BANK,
Nos. 5118 and 5162 *vs.* *Appellant,*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL.,
Appellees.

THE NEW YORK TRUST COMPANY,
Nos. 5119 and 5163 *vs.* *Appellant,*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL.,
Appellees.

RECONSTRUCTION FINANCE CORPORATION,
Nos. 5120 and 5164 *vs.* *Appellant,*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL.,
Appellees.

COUNSEL FOR APPELLANTS:

Counsel for Appellant, Continental Illinois National Bank & Trust Co.:
MR. ISAAC MAYER,
MR. CARL MEYER,
MR. DAVID F. ROSENTHAL,
MR. HERBERT A. FIEDLICH,

Counsel for Appellant, The Chase National Bank of the City of New York:
MR. PAUL D. MILLER,
MR. ELDON BISBEE,
MR. HENRY ROOT STERN,
MR. B. F. SHIPMAN,

Counsel for Appellant, Mississippi Valley Trust Co.:
MR. T. M. PIERCE,
MR. S. MAYNER WALLACE,
MR. MILTON R. STIHL.

Counsel for Appellant, Harris Trust & Savings Bank:
MR. PERRY M. CHADWICK.

Counsel for Appellant, The New York Trust Co.:
EDWIN W. SIMS,
MR. JAMES P. CAREY, JR.

Counsel for Appellant, Reconstruction Finance Corporation:
MR. JOHN L. HOPKINS,
MR. CHARLES O. PARKER,
MR. JAMES A. SPROWL.

COUNSEL FOR APPELLEES:

Counsel for Appellees, The Chicago, Rock Island & Pacific Ry. Co. et al.:
MR. MARCUS L. BELL,
MR. W. F. DICKINSON,
MR. W. F. PETER.

Counsel for Appellee, Protective Committee of Debtor's 50 year 4½% Gold Bonds:
MR. W. LLOYD KITCHEL.

Counsel for Appellees, Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds:
MR. WILKIE BUSHBY.

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Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable James H. Wilkerson, District Judge of the United States for the Northern District of Illinois, on twenty second day of November, in the year of our Lord one thousand nine hundred and thirty three, being one of the days of the regular November Term of said Court, begun Monday, the sixth day of November, and of our Independence the 158th year.

Present:

Honorable James H. Wilkerson.
H. C. W. Laubenheimer, U. S. Marshal.
Charles M. Bates, Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES,

Northern District of Illinois,

Eastern Division.

In the Matter of
The Chicago, Rock Island and Pacific Railway Company,
Debtor.
No. 53209.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Petition in the above-entitled cause in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the 7th day of June, 1933.

* * (Caption) * *

PETITION.

To the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division.

The petition of The Chicago, Rock Island and Pacific Railway Company, a railroad corporation, hereinafter referred to as the Debtor, respectfully represents:

First: That the Debtor is a railroad corporation organized and existing under the laws of the states of Illinois and Iowa, and is a citizen and resident of the State of Illinois; and is a common carrier by railroad, engaged in the transportation of persons and property in interstate and intrastate commerce, in the states of Illinois, Iowa, Minnesota, South Dakota, Nebraska, Kansas, Missouri, Colorado, Arkansas, Louisiana, Oklahoma, Tennessee and New Mexico, and is not a street, suburban or interurban electric railway; that during the six months' period immediately preceding the filing of this petition the Debtor has had, and now has, its principal operating office in the City of Chicago, Illinois, in the Northern District of Illinois, Eastern Division.

Second: That there will become due on the dates indicated below the following obligations of the Debtor:

June 27—Semi-annual interest on loan of $1,500,000 from Reconstruction Finance Corporation	$	41,239.73
June 30—Semi-annual interest on loan of $2,000,000 from Reconstruction Finance Corporation		54,904.12
July 1—Semi-annual interest on $61,581,000 of the Debtor's General Mortgage 4% Bonds, due January 1, 1988		1,231,620.00
Semi-annual interest on $3,524,000 Choctaw & Memphis 5% First Mortgage Bonds, due January 1, 1949		88,100.00
Semi-annual interest on $453,600 of Little Rock & Hot Springs Western Notes, due July 1, 1939, of Rock Island, Arkansas and Louisiana Railroad Company, guaranteed by the Debtor		9,072.00
Semi-annual interest on the Debtor's Equipment Trust Certificates, Series O,		147,375.00
Annual instalment of principal of the Debtor's Equipment Trust, Series O,		655,000.00
July 15—Semi-annual interest on Debtor's Equipment Trust Certificates, Series I, Director General's Equipment Trust No. 25,		32,400.00
Total	$	2,259,710.85

In addition to the foregoing obligations presently due, and to its other fixed charges and taxes which will become due during the remainder of the year 1933 and in January and February, 1934, the following principal obligations of the Debtor will mature on the dates indicated:

March 1, 1934—Bank loans, secured by the pledge of $14,409,000, face amount, of the Debtor's treasury securities	$	4,125,000.00
Loans from Reconstruction Finance Corporation secured by pledge of $40,301,965 face amount of the Debtor's treasury securities, and by the pledge of the Debtor's distributive share,		

	approximating $1,431,000, in the assets of the Railroad Credit Corporation	$13,718,700
	Rock Island, Arkansas and Louisiana First Mortgage 4½% Gold Bonds, guaranteed as to principal and interest by the Debtor, and secured by first lien upon 353.88 miles of railroad and appurtenances constituting part of the Debtor's system of railways	11,000,000
April 1, 1934—	Burlington, Cedar Rapids and Northern Consolidated First Mortgage 5% Gold Bonds, secured by first lien upon 1260.24 miles of railroad and appurtenances constituting part of the Debtor's system	11,000,000
	First and Refunding 4% Gold Bonds of the Debtor, secured by first lien upon 1290.0[illegible] miles, and by lien subject to existing mortgages, upon 4482.56 miles of railroad and appurtenances constituting part of the Debtor's system	104,470,000
	Total	$144,303,700

That the Debtor is without funds to pay and discharge the aforesaid obligations as they mature, and on information and belief alleges that it has no means of borrowing or otherwise procuring such funds; that it is unable to meet its debts as they mature, and desires to effect a plan of reorganization, pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy.

Third: That a copy of this petition is this day being filed with the Interstate Commerce Commission.

Fourth: That the filing of this petition by and on behalf of the Debtor was duly authorized by resolution of the Board of Directors of the Debtor, adopted at a meeting thereof duly held on the 7th day of June, 1933.

Wherefore, Your petitioner prays that an order may be entered approving this petition as properly filed under said

Section 77, and that it be granted all other and further relief to which it may be entitled.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,
By W. H. BURNS
Vice President.

MARCUS L. BELL,
25 Broad Street,
New York.
W. F. DICKINSON,
W. F. PETER,
1025 LaSalle Street Station,
Chicago, Ill.
Attorneys for Debtor.

United States of America,
Northern District of Illinois, } ss.
Eastern Division,

W. H. BURNS, being duly sworn, deposes and says that he is an officer, to wit, a Vice President, of The Chicago, Rock Island and Pacific Railway Company, a railroad corporation, the petitioning Debtor mentioned and described in the foregoing petition; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes them to be true; also that said petition is filed in good faith.

W. H. BURNS.

Subscribed and sworn to before me, this 7th day of June, 1933.

W. J. GEDL
(Seal) *Notary Public, Cook County, Ill.*

My commission expires November 15, 1933.

.....
Clerk.

Filed .....

And afterwards, to wit, on the 7th day of June, 1933, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

* * (Caption) * *

ORDER.

Upon due consideration of the petition of The Chicago, Rock Island and Pacific Railway Company, the above named Debtor, verified June 7, 1933, and filed herein this day, stating that such Debtor is unable to meet its debts as they mature and that it desires to effect a plan of reorganization in accordance with Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, and the Court being satisfied that such petition complies with said Section and has been filed in good faith, it is

Ordered:

(1) That said petition be, and hereby it is approved as properly filed under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy.

(2) That the Debtor be, and hereby it is, authorized and directed, pending further order of this Court in the premises, to run, manage, maintain, operate and keep in proper condition and repair the railroads and property of the Debtor, wherever situated, whether in this state, judicial circuit, or elsewhere, and to manage and conduct its business, and to this end to exercise its authority and franchises and discharge all public duties obligatory upon it; and to employ and discharge and fix the compensation of all officers, attorneys, managers, superintendents, agents and employes; to collect and receive the income, rents, revenues, tolls, issues and profits of said property; to collect all outstanding accounts and all dividends and interest on securities belonging to it; to exercise such sale, conveyance, exchange and release rights as are reserved to, or available to, the Debtor, under outstanding deeds of trust, mortgages, trust indentures, and similar instruments, and to use the proceeds of sale of released property as provided in such instruments; all in the same manner that it would be entitled and bound to do in its own right; and, to the extent necessary to protect and preserve the property of the Debtor, to make and pay for additions and betterments to the railroads and property of the Debtor, all of the foregoing powers to be exercised according to law, and subject to such supervision and control by the Court as the Court may exercise by further orders entered herein.

(3) That the Debtor is authorized in its discretion, from

time to time until further order of this Court, out of funds now or hereafter coming into its hands, to pay:

(a) All taxes and assessments due or to become due upon the property of the Debtor;

(b) All necessary current expenses of the Debtor in operating the railroads and conducting the business of the Debtor, including among other expenses the wages, salaries and compensation of all officers, attorneys, counsel, managers, superintendents, agents or employes retained by the Debtor, ticket, traffic, car mileage and car per diem balances, interline accounts, freight and overcharge claims, and amounts for car and equipment repairs which may become due to connecting or other railroad companies or other common carriers; also all sums now due or which may hereafter become due to other persons or corporations for the occupation or use, jointly or otherwise, of buildings, depots, terminals, tracks, side tracks, yards, warehouses, shops, bridges and other railroad facilities, and such sums as may be necessary to comply with the obligations of the Debtor under contracts by virtue of which said occupation or use may now or hereafter be enjoyed (but such payments shall not constitute affirmations of said contracts, or of any of them);

(c) The following claims incurred by the Debtor within six months preceding the date of this order, in the usual and customary operation of its properties, and the conduct of its current business, to-wit: Wages, salaries, fees and other charges due and payable for services rendered to the Debtor; unpaid material and supply accounts incurred in the operation of said properties; unpaid and outstanding pay checks and wage checks representing labor actually performed for the Debtor, and unpaid ticket, traffic, car mileage and car per diem balances, interline accounts, freight and overcharge claims and amounts for car and equipment repairs, incurred by the Debtor;

(d) Pending further order of this Court in the premises, the Debtor hereby is authorized to pay pay checks, and like instruments issued to employes for services rendered to the Debtor, whenever the same are presented for payment, whether before or during said six months' period;

(e) The cost of maintaining the corporate existence of the Debtor, including the necessary expenses of the preservation of records, and the registration and transfer of its stocks and bonds and trustee's charges under indentures under which securities of the Debtor have been issued;

(f) All monthly payments due from time to time under

the existing pension and group insurance system of the Debtor;

(g) The expense of printing pleadings, motions, petitions and orders now on file or hereafter filed in this case reasonably necessary to be printed, in such quantity as shall provide copies for the use of the Court, the Debtor, parties to the cause, and such others as may have a substantial interest therein; such expense to be taxed as costs in this case.

(4) That the Debtor shall be allowed until October 1, 1933 (unless the time be extended further by order of this Court), within which to disaffirm any contracts. Such disaffirmance shall be indicated by notice to that effect, in writing, served on the other party or parties to such contract, and filed of record in this proceeding, and continued operation by the Debtor under any of said contracts, within said period allowed for disaffirmances, shall not be deemed to conclude the Debtor in respect of such election, or to constitute an election.

(5) That, pending further order of the Court in the premises, the Debtor is authorized and empowered to institute or prosecute in any Court, or before any tribunal of competent jurisdiction, all such suits and proceedings as may be necessary, in its judgment, for the recovery or proper protection of its property or rights, and to make settlement of any thereof; and likewise to defend or liquidate, by written agreement or consent judgments, any actions, claims, proceedings, or suits, now pending against the Debtor, or which may hereafter be asserted, or be brought in any Court, or before any officer, department, commission or tribunal, to which the Debtor is, or shall be, a party, but no payments shall be made by the Debtor in respect of any such claims accruing prior to the date of this order, in respect of any actions, proceedings, or suits, on such claims, without further order or direction of this Court, except such as may be permitted by other general orders hereafter entered herein, and such as constitute preferred claims under the Acts of Congress relating to bankruptcy; and no action taken by the Debtor in defense or settlement of such claims, actions, proceedings, or suits, shall have the effect of establishing any claim upon, or right in, the property or funds in the possession of the Debtor, that otherwise would not exist.

(6) The Debtor shall close its present books of account as of the close of business on June 7, 1933. The Debtor shall open new books of account as of the opening of business on June 8, 1933, and cause to be kept therein due and proper

accounts of the earnings, expenses, receipts and disbursements of the Debtor, and shall preserve proper vouchers for all payments made on account thereof, and shall deposit the moneys coming into its hands in such of the banks in which funds of the Debtor are presently deposited, as shall be selected by the Debtor, or in such other bank or banks as shall be selected and approved by this Court.

(7) That, not later than August 31, 1933, the Debtor shall file with the Clerk of this Court a statement of the Assets and Liabilities of the Debtor as of the close of business on June 7, 1933, and, within forty-five days after the close of each calendar month thereafter shall file with said Clerk a statement of the Assets and Liabilities of the Debtor as of the close of business on the last day of the second preceding calendar month, together with a summary statement of the revenues and expenses of the Debtor for the second preceding calendar month. All such statements shall be certified as correct by the chief accounting officer of the Debtor.

(8) That all persons, firms and corporations, whatsoever, and wheresoever situated, located or domiciled, hereby are restrained and enjoined from interfering with, attaching, garnisheeing, levying upon, and enforcing liens upon, or in any manner whatsoever disturbing any portion of the assets, goods, money, railroads, properties, and premises belonging to, or in the possession of the Debtor, or from taking possession of, or in any way interfering with the same, or any part thereof, or from interfering in any manner to prevent the discharge by the Debtor of its duties in the operation of said property and business, under the orders of this Court, or from bringing any new suits or actions, accruing prior to this date, in or before any Court from which an appeal, or proceedings to review, can be taken only upon the filing of an appeal bond, as a jurisdictional or mandatory requirement.

(9) This Court reserves full right and jurisdiction to make from time to time such orders as the Court shall deem proper, limiting the time within which suits against the Debtor may be brought, staying any suits now pending, or hereafter brought against the Debtor, appointing a Trustee or Trustees of all of said Debtor's property and estate, with all the title and powers of such Trustee or Trustees under and subject to the provisions of the Acts of Congress relating to bankruptcy, including the power to operate the business of said Debtor, fixing the time within which any plan of reorganization shall be proposed, accepted and confirmed,

requiring the Debtor to file such schedule and submit such information as may be necessary to disclose the conduct of the Debtor's affairs and the fairness of any proposed plan, fixing a reasonable time within which claims and interests of creditors and stockholders may be filed or evidenced and allowed, and the division of creditors and stockholders into classes according to the nature of their respective claims and interests, and in general such orders amplifying, extending, limiting or otherwise modifying this order as to the Court may at any time seem proper.

JAMES H. WILKERSON,
District Judge.

Dated June 7, 1933.
Filed ....., 1933.

.....,
Clerk.

And afterwards, to wit, on the 8th day of June, 1933, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

* * (Caption) * *

ORDER.

Upon further consideration of the petition of the above-named Debtor, filed herein June 7, 1933, and of the order of this court entered thereon on June 7, 1933, it is Ordered:

That sub-paragraph (c) of paragraph (3) of said order is amended to read as follows:

(c) The following claims incurred by the Debtor within six months preceding the date of this order, in the usual and customary operation of its properties, and the conduct of its current business, to-wit: Wages, salaries, fees and other charges due and payable for services rendered to the Debtor; unpaid material and supply accounts incurred in the operation of said properties; unpaid and outstanding pay checks and wage checks representing labor actually performed for the Debtor. The Debtor is also authorized in its discretion to adjust, compromise and pay claims of shippers, consignees, or others in interest, for overcharges or reparation awards, and for loss, damage or delay to freight and baggage; also

to settle and pay on behalf of itself and other carriers and private car owners, claims arising out of rate divisions, interline settlements, per diem accounts, switching reclaims, proportion of reparation awards, and freight charges or adjustments respecting shipments with transit or storage privileges and other charges or adjustments of like character between carriers in the conduct of their joint business, regardless of when accrued.

JAMES H. WILKERSON,
District Judge.

Dated June 8, 1933.

And on, to wit, the 26th day of June, 1933, came The Chicago, Rock Island & Pacific Railway Company, by its attorneys and filed in the Clerk's office of said Court a certain Petition of Debtor Respecting Certain Maturing Obligations in words and figures following, to wit:

* * * (Caption) * *

PETITION OF DEBTOR RESPECTING CERTAIN MATURING OBLIGATIONS:

And now comes the Debtor, The Chicago, Rock Island and Pacific Railway Company, and respectfully asks the Court for instructions with respect to the payment of the following principal and interest obligations, due as set forth below:

1. As set forth in the Petition filed herein June 7, 1933, the following principal and interest obligations of the Debtor will mature as indicated:

June 27—	Semi-annual interest, at 5½% per annum, on loan of $1,500,000 from Reconstruction Finance Corporation....	$ 41,239.73
June 30—	Semi-annual interest, at 5½% per annum, on loan of $2,000,000 from Reconstruction Finance Corporation....	54,904.12
	(By their terms, the notes evidencing these loans bear 6% interest, but the Reconstruction Finance Corporation has granted a concession to 5½% for the current semi-annual period.)	

July 1—	Semi-annual interest on $61,581,000 of the Debtor's General Mortgage 4% Bonds, due January 1, 1988,.....	1,231,620.00
	Semi-annual interest on $3,524,000 Choctaw & Memphis 5% First Mortgage Bonds, due January 1, 1949,.....	88,100.00
July 1—	Semi-annual interest on $453,600 of Little Rock & Hot Springs Western Notes, due July 1, 1939, of Rock Island, Arkansas and Louisiana Railroad Company, guaranteed by the Debtor	9,072.00
	Semi-annual interest on the Debtor's Equipment Trust Certificates, Series O,.....	147,375.00
July 15—	Annual instalment of principal of the Debtor's Equipment Trust, Series O,.	655,000.00
	Semi-annual interest on Debtor's Equipment Trust Certificates, Series I, Director General's Equipment Trust No. 25	32,400.00
	Total	$2,259,710.85

2. The Debtor estimates that as of the close of business June 30, 1933, it will have cash available for said payments in the sum of $975,000.

3. The Debtor recommends to the Court that it be authorized to pay on their due dates the following obligations:

(a) Interest on the loans from the Reconstruction Fiance Corporation.

The Debtor's total indebtedness to the Reconstruction Finance Corporation, is $13,718,700, evidenced by various notes maturing March 1, 1934. These notes are secured by the pledge of the following treasury securities of the Debtor:

First and Refunding 4% Gold Bonds.....	$ 7,575,000.00
St. Paul and Kansas City Short Line 4½% Gold Bonds	9,374,500.00
Rock Island, Arkansas and Louisiana 4½% Gold Bonds	3,862,000.00
Total	$20,811,500.00
Miscellaneous securities, par value.....	$19,490,965.85
Total	$40,302,465.85

These miscellaneous securities are not listed securities, but are bonds of subsidiary companies comprising parts of the Debtor's system of railways, for the most part issued to the Debtor at par, in return for advances for construction and for additions and betterments to their respective properties. Petitioner is of the opinion that the collateral securing the said loans from the Reconstruction Finance Corporation is substantially in excess of the amount of the loans. A default in the payment of interest on the said loans will, under the terms of the notes given to evidence the same, authorize the Reconstruction Finance Corporation to declare due and demand the payment of the principal thereof, and, in the event of non-payment of said principal, to sell and dispose of the collateral securing the said notes.

Petitioner further shows to the Court that it is indebted to various banks in the amounts shown below; all of the said indebtedness being evidenced by notes due March 1, 1934, secured by the collateral indicated:

		Amount of Loan.
1. Chase National Bank, New York		$2,000,000
Collateral—		
First and Refunding 4% Gold Bonds	$3,253,000	
St. Paul and Kansas City Short Line 4½% Gold Bonds	3,956,000	
	$7,209,000	
2. Continental Illinois Bank and Trust Company, Chicago		1,250,000
Collateral—		
First and Refunding 4% Gold Bonds	$1,307,000	
St. Paul and Kansas City Short Line 4½% Gold Bonds	2,758,000	
	$4,065,000	
3. New York Trust Company, New York		500,000
Collateral—		
First and Refunding 4% Gold Bonds	$ 800,000	
St. Paul and Kansas City Short Line 4½% Gold Bonds	1,010,000	
	$1,810,000	

4. Harris Trust and Savings Bank, Chicago.....			250,000
Collateral—			
First and Refunding 4% Gold Bonds.....	$ 405,000		
St. Paul and Kansas City Short Line 4½% Gold Bonds.....	490,000		
	$ 895,000		
5. Mississippi Valley Trust Company, St. Louis..			125,000
Collateral—			
First and Refunding 4% Gold Bonds:.....	$ 190,000		
St. Paul and Kansas City Short Line 4½% Gold Bonds.....	240,000		
	$ 430,000		
Total Bank Loans.....			$4,125,000

The interest on the said loans, which is at the rate of 6% per annum, is payable semi-annually on the first day of February and the first day of August in each year.

All of the said loans were made with the sanction of the Interstate Commerce Commission, in Finance Docket No. 9384, and, by agreement of August 1, 1932, between the Petitioner, the Reconstruction Finance Corporation and the said banks, a default in the payment of the interest on the Reconstruction Finance Corporation loans will amount to a default in the terms of the notes evidencing said bank loans, and will thereupon authorize the said banks to declare due and demand payment of the principal of their loans; and, if not paid, to sell and dispose of the collateral securing the same. Petitioner, therefore, recommends the payment of the interest due June 27 and June 30, as set forth above, on the Reconstruction Finance Corporation loans.

(b) Semi-annual interest amounting to $88,100 on $3,524,000 Choctaw & Memphis First Mortgage 5% Gold Bonds, due January 1, 1949.

These bonds are a first lien on 280 miles of railway in Arkansas and on certain terminals in Memphis, Tennessee, at the rate of $12,585 per mile of road. The mileage involved is very important to the Debtor's system, being its main line west from Memphis, Tennessee, through Arkansas, and forming part of the Debtor's main line to Tucumcari, New Mexico.

(c) Semi-annual interest amounting to $9,072 on $453,600 of Little Rock & Hot Springs Western Notes, due July 1, 1939, of Rock Island, Arkansas and Louisiana Railroad Company, guaranteed by the Debtor.

These notes are purchase money notes given for the purchase of 21.99 miles of main line railroad extending from Little Rock, Arkansas, to Benton, Arkansas. The mileage comprises part of the Debtor's main line from Little Rock to Eldorado, Arkansas, and Eunice, Louisiana, and from Little Rock to Hot Springs, Arkansas.

(d) Equipment Trust obligations, as set forth above.

The Series O Equipment Trust was formed in 1927, for the purchase of equipment, consisting of 50 locomotives, 5 motor cars, 78 passenger cars and 2,500 freight cars, costing $11,406,745.49. It comprises an issue of $8,515,000 of 4½% Equipment Trust Certificates, dated July 1, 1927, maturing at the rate of $655,000 on July 1 of each year from 1930 to 1942, inclusive, the interest being payable semi-annually on January 1 and July 1. $1,965,000 of these certificates have been redeemed and cancelled, and $6,550,000, of which the instalment due July 1 next forms part, are outstanding in the hands of the public.

Under the terms of the Equipment Trust Agreement, the Chase National Bank of New York, as Trustee, holds title to the equipment, and the Debtor operates the same under lease, having agreed to pay as rental the maturing principal and interest payments. Upon default in the payment of the said rental, the Trustee will be entitled to declare due and demand payment of all the outstanding certificates, and to take possession of and dispose of the equipment. All of the said equipment is important in the operation of the Debtor's system of railways.

The Series I Equipment Trust, Director General's No. 25, of which the Guaranty Trust Company of New York is Trustee, was formed for the purpose of paying for 2,500 box cars and 30 locomotives purchased by the Director General and assigned to the Debtor during Federal Control. $8,117,250 of 6% Equipment Trust Notes were issued January 15, 1920, payable at the rate of $540,000 on January 15 of each year to January 15, 1935, and bearing interest at 6% per annum, payable January 15 and July 15 in each year. $1,080,000 of the said Series I Notes are now outstanding. A default in

the payment of the interest due July 15 will constitute a default in the terms of the Equipment Trust Agreement, and authorize the Trustee to declare due the principal of the outstanding notes and to demand payment thereof; and, in default of such payment, to retake the equipment, which is now in use on the Debtor's system of railways.

4. The Debtor has not sufficient funds at this time to pay the interest due July 1 on its General Mortgage 4% Gold Bonds. These bonds are an underlying lien on the most important part of the Debtor's system. The amount outstanding in the hands of the public is $61,581,000, and constitute a first lien on 3,130 miles of railroad, at the rate of $19,674 per mile. Under the terms of the General Mortgage of January 1, 1898, securing the said bonds, of which said mortgage Bankers Trust Company of New York and H. F. Wilson are now Trustees, a period of six months' grace is allowed for the payment of interest before the Trustees, under the terms of the said mortgage, can declare due the principal of the outstanding bonds, or pursue the other remedies set forth in the said mortgage in the case of default. The Debtor expects that long prior to the expiration of the said period of default it will have in its hands funds derived from the operation of its properties sufficient to pay the July 1 instalment of interest on all of the outstanding General Mortgage Bonds, and will promptly upon the acquisition of such funds ask authority of the Court to pay the said interest.

Wherefore, The Debtor prays authority from the funds now in its hands to make the principal and interest payments specified in paragraph 3 of this petition, and temporarily to defer payment of interest due July 1, 1933, on its General Mortgage 4% Gold Bonds.

Respectfully submitted,
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,
By J. E. GORMAN,
President.

MARCUS L. BELL,
25 Broad Street,
New York.
W. F. DICKINSON,
W. F. PETER,
1025 LaSalle Street Station,
Chicago, Ill.
Attorneys for Debtor.

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

J. E. GORMAN, being duly sworn, deposes and says that he is an officer, to wit, President, of The Chicago, Rock Island and Pacific Railway Company, a railroad corporation, the petitioning Debtor mentioned and described in the foregoing petition; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes them to be true; also that said petition is filed in good faith.

J. E. GORMAN.

Subscribed and sworn to before me, this 26th day of June, 1933.

W. J. GEDL,
(Seal) *Notary Public, Cook County, Ill.*

My commission expires November 15, 1933.

And afterwards, to wit, on the 26th day of June, 1933, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

* * (Caption) * *

ORDER RESPECTING CERTAIN MATURING OBLIGATIONS.

Certain obligations maturing June 27, June 30, July 1 and July 15, and the Court having heard the statements of Counsel, and being fully advised in the premises, it is Ordered:

That the Debtor be and it hereby is authorized to pay the following obligations as they mature:

June 27—Semi-annual interest on loan of $1,500,000 from Reconstruction Finance Corporation ..... $ 41,239.73

June 30—Semi-annual interest on loan of $2,000,000 from Reconstruction Finance Corporation ..... $ 54,904.12

July 1—	Semi-annual interest on $3,524,000 Choctaw & Memphis 5% First Mortgage Bonds, due January 1, 1949, ...	$ 88,100.00
	Semi-annual interest on $453,600 Little Rock & Hot Springs Western Notes of Rock Island, Arkansas and Louisiana Railroad Company, guaranteed by the Debtor	$ 9,072.00
	Semi-annual interest on the Debtor's Equipment Trust Certificates, Series O,	$147,375.00
	Annual instalment of principal of the Debtor's Equipment Trust, Series O, ...	$655,000.00
July 15—	Semi-annual interest on Debtor's Equipment Trust Certificates, Series I, Director General's Equipment Trust No. 25.	$ 32,400.00

It Is Further Ordered:

That the Debtor be and it hereby is authorized temporarily to defer the payment of the interest due July 1 on $61,581,000 General Mortgage 4% Gold Bonds, amounting to $1,231,620; and the Debtor is further authorized and directed to pay the said interest when and as funds are available from the earnings of the trust estate.

Signed:

JAMES H. WILKERSON
Judge.

Dated June 26, 1933.

And on, to wit, the 26th day of July, 1933, came The Chicago, Rock Island & Pacific Railway Company by its attorneys and filed in the Clerk's office of said Court a certain Petition of Debtor Respecting Obligations Maturing August 1, in words and figures following, to wit:

Petition for Order No. 5.

* * (Caption) * *

PETITION OF DEBTOR RESPECTING OBLIGATIONS MATURING AUGUST 1, 1933.

1. The Debtor, The Chicago, Rock Island and Pacific Railway Company, respectfully requests the instructions of the Court with reference to payment of the following principal and interest obligations due and payable August 1, 1933:

(a) Semi-annual interest on loan of $5,312,500 from Reconstruction Finance Corporation	$ 158,065
(b) Semi-annual interest on various bank loans aggregating $4,125,000	124,437
(c) Principal instalment on Equipment Trust Certificates, Series N	360,000
(d) Semi-annual interest on outstanding Equipment Trust Certificates, Series N	64,800
(e) Principal instalment on Equipment Trust Certificates, Series P	630,000
(f) Semi-annual interest on outstanding Equipment Trust Certificates, Series P	170,100
(g) Semi-annual interest on St. Paul and Kansas City Short Line 4½% First Mortgage Gold Bonds, due February 1, 1941, guaranteed as to principal and interest by the Debtor, approximately	225,000
Total	$1,732,402

2. The Debtor has not yet paid the semi-annual interest due July 1 on its General Mortgage 4% Gold Bonds, amounting to $1,231,620; but, as authorized by Order No. 4 entered herein June 26, 1933, it has temporarily deferred the payment of said interest.

3. The Debtor estimates that as of the close of business July 31, 1933 it will have in hand cash available for the payment of the foregoing obligations in the sum of approximately $1,500,000.

4. The Debtor recommends to the Court that it be authorized to pay on August 1, 1933, the following obligations:

(a) Interest on the loans from the Reconstruction Finance Corporation and various banks.

The reasons for this recommendation are fully set forth in the Debtor's petition for Order No. 4, filed herein June 26, 1933.

(b) Equipment Trust obligations as set forth above.

Series N Equipment Trust was formed August 1, 1925, for the purchase of 20 locomotives, 7 baggage cars, 1,600 freight cars, 1,000 rebuilt refrigerator cars, and other equipment of a total cost of approximately $7,300,000. It comprises an issue of $5,400,000 Equipment Trust Certificates dated August 1, 1925, maturing in annual instalments of $360,000 payable on August 1 in each year to 1940, the interest being payable semi-annually on February 1 and August 1. $2,520,000 of these certificates have been redeemed and cancelled, and $2,880,000, of which the instalment due August 1 forms part, are outstanding in the hands of the public. The Chase National Bank of the City of New York is Trustee.

The Series P Equipment Trust was formed August 1, 1929, for the purchase of 30 locomotives, 72 passenger train cars, 23 motor cars, 2,500 freight cars and other equipment, of a total cost of $12,618,104.71. It comprises an issue of $9,450,000 4½% Equipment Trust Certificates maturing annually at the rate of $630,000 on August 1 in each year from 1930 to 1944, inclusive, of which $1,890,000 have been redeemed and cancelled, and $7,560,000, of which the instalments due August 1 forms part, are outstanding in the hands of the public. The Chase National Bank of the City of New York is Trustee.

Upon default in the payment of the principal and interest instalments due August 1 in either of the above trusts, the Trustee thereof would be entitled to declare due and demand payment of all the outstanding certificates, and to take possession and dispose of the equipment. All of the equipment is necessary in the operation of the Debtor's property.

5. The Debtor has not sufficient funds at this time to pay the interest due August 1 on the St. Paul and Kansas City Short Line 4½% Gold Bonds. Said company, hereinafter referred to as the "Short Line", is an Iowa corporation, the entire capital stock of which is owned by the Debtor. It owns 419 miles of railroad in Iowa and Missouri, all of which is operated by the Debtor under a lease for 99 years from November 1, 1913. It now has outstanding $27,232,500, face amount, in dollar form and £119,200 in sterling form of First Mortgage 4½% Gold Bonds due February 1, 1941, all of which are guaranteed as to principal and interest by the Debtor. Of these bonds $9,404,000 in dollar form and £119,-

200 in sterling form are outstanding in the hands of the public, the remainder being pledged with the Reconstruction Finance Corporation and various banks, as set forth in petition for Order No. 4 herein filed June 26, 1933. Under the terms of the Short Line's First Mortgage securing said bonds, of which Mortgage Bankers Trust Company of New York is Trustee, a period of 30 days' grace is allowed for the payment of interest before the Trustee under the terms thereof may declare due the principal of the outstanding bonds, or pursue the other remedies set forth in the said Mortgage in case of default. The Debtor asks authority to defer payment of interest due August 1, 1933, upon the said Short Line Bonds.

Respectfully submitted,
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,
By J. E. GORMAN
President.

MARCUS L. BELL,
25 Broad Street,
New York.
W. F. DICKINSON,
W. F. PETER,
1025 LaSalle Street Station,
Chicago, Illinois.
Attorneys for Debtor.

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

J. E. GORMAN, being duly sworn, deposes and says that he is an officer, to wit, President, of The Chicago, Rock Island and Pacific Railway Company, a railroad corporation, the petitioning Debtor mentioned and described in the foregoing petition; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes them to be true; also that the said petition is filed in good faith.

J. E. GORMAN.

Subscribed and sworn to before me, this 19th day of July, 1933.
(Seal)

B. M. HOPKINS.

And afterwards, to wit, on the 26th day of July, 1933, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

Order No. 5.

* * (Caption) * *

ORDER RESPECTING OBLIGATIONS MATURING AUGUST 1, 1933.

On this day coming on to be heard the petition of the Debtor, respecting principal and interest obligations maturing August 1, 1933, and the Court having heard the statements of Counsel, and being fully advised in the premises, it is

Ordered:

That the Debtor be and it hereby is authorized to pay the following obligations due August 1, 1933:

(a) Semi-annual interest on loan of $5,312,500 from Reconstruction Finance Corporation	$ 158,065
(b) Semi-annual interest on various bank loans aggregating $4,125,000	124,437
(c) Principal instalment on Equipment Trust Certificates, Series N	360,000
(d) Semi-annual interest on outstanding Equipment Trust Certificates, Series N	64,800
(e) Principal instalment on Equipment Trust Certificates, Series P	630,000
(f) Semi-annual interest on outstanding Equipment Trust Certificates, Series P	170,100
Total:	$1,507,402

It Is Further Ordered:

That the Debtor be and it hereby is authorized to defer the payment of interest due August 1 on the First Mortgage 4½% Gold Bonds of the St. Paul and Kansas City Short Line Railroad Company.

Signed:

JAMES H. WILKERSON,
Judge.

Dated July 26, 1933.

And on, to wit, the 28th day of August, 1933, came the St. Paul and Kansas City Short Line Railroad Company and Rock Island, Arkansas and Louisiana Railroad Company by their attorneys and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit:

Petition for Order No. 10.

* * (Caption) * *

PETITION OF ST. PAUL AND KANSAS CITY SHORT LINE RAILROAD COMPANY AND ROCK ISLAND, ARKANSAS AND LOUISIANA RAILROAD COMPANY.

To the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

The St. Paul and Kansas City Short Line Railroad Company, a corporation of Iowa (hereinafter in these proceedings called the "Short Line") and of Rock Island, Arkansas and Louisiana Railroad Company, a corporation of Arkansas and Louisiana (hereinafter called the "Louisiana Company"), Debtors, respectfully represent:

1. The Chicago, Rock Island and Pacific Railway Company (hereinafter called the "Pacific Company"), Debtor herein, owns the entire capital stock, having power to vote for the election of Directors (other than directors' qualifying shares), of the Short Line and the Louisiana Company.

2. The Short Line owns approximately 418.73 miles of railroad and appurtenances in Iowa and Missouri, all of which is operated by the Pacific Company in interstate commerce, under a lease for 99 years from November 1, 1913.

3. The Louisiana Company owns approximately 353.88 miles of railroad and appurtenances in Arkansas and Louisiana, and has trackage rights over 47.52 miles of the lines of other companies, all of which are operated by the Pacific Company in interstate commerce, under a lease for 999 years from January 31, 1906.

4. On June 7, 1933, the Pacific Company, Debtor, filed in this Court, in the above entitled proceedings, a petition stating that it is unable to meet its debts as they mature, and that it desires to effect a plan of reorganization pursuant to Section 77 of Chapter VIII of the Acts of Congress relating

to bankruptcy; and on said date this Court approved said petition as properly filed.

5. That the Short Line is without sufficient funds to pay and discharge its obligations, and is unable to meet its debts as they mature; specifically the interest due August 1, 1933, amounting to approximately $225,000, on approximately $9,981,880 outstanding in the hands of the public of its First Mortgage 4½% Gold Bonds, due February 1, 1941, issued under and secured by its First Gold Bond Mortgage, dated February 23, 1911, to Bankers Trust Company of New York, as Trustee. Under said Mortgage, $27,232,500 of said bonds have been issued in Dollar form and £119,200 in Sterling form; of which all the said bonds in Sterling form and $9,404,000 in Dollar form are outstanding in the hands of the public, and $17,828,500 in Dollar form are owned by the Pacific Company. Of the latter, $8,454,000 are pledged with various banks, and $9,374,500 are pledged with the Reconstruction Finance Corporation.

The Louisiana Company is without sufficient funds to pay and discharge its obligations, and is unable to meet its debts as they mature; specifically the interest due September 1, 1933, amounting to $247,500, on $11,000,000, outstanding in the hands of the public of its First Mortgage 4½% Gold Bonds due March 1, 1934, issued under and secured by its First Mortgage of March 1, 1910, to Bankers Trust Company of New York, as Trustee. Under said Mortgage, $14,862,000 First Mortgage Bonds have been issued, of which $11,000,000 are outstanding in the hands of the public, and $3,862,000 are owned by the Pacific Company and pledged by it with the Reconstruction Finance Corporation.

6. The Short Line and the Louisiana Company each desires to effect a plan of reorganization in connection with, or as a part of, the plan of reorganization of the Pacific Company referred to in its said Petition filed herein on June 7, 1933.

7. A copy of this Petition will forthwith be filed with the Interstate Commerce Commission.

8. That owing to the large number of creditors of the Debtors joining in this Petition and the great amount of clerical and other labor required to make complete lists of creditors and other information required by clause (c) of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, it is not practicable to prepare said lists within fifteen days and that for that reason the Debtors desire an extension of said time.

9. That the filing of this Petition by the said Debtors joining herein was duly authorized by said Debtors by resolutions of their respective Boards of Directors thereunto duly authorized.

Wherefore, The Debtors hereinabove mentioned pray that an Order may be entered herein approving this Petition as properly filed by each of said Debtors under said Section 77 and that they may each be allowed to effect a plan of reorganization in connection with, or as part of, the plan of reorganization of the Pacific Company referred to in said Petition of said Debtor; that the time to prepare the lists of bondholders, creditors and stockholders of the Debtors joining in this Petition be extended to October 15, 1933, and that the Court will enter an appropriate Order granting to the petitioning Debtors such rights and powers as may be requisite for the carrying on of their business and the preservation of their properties, and that they be granted all other and further relief to which they may be entitled.

ST. PAUL AND KANSAS CITY SHORT LINE RAILROAD COMPANY,
By J. E. GORMAN
President.

ROCK ISLAND, ARKANSAS AND LOUISIANA RAILROAD COMPANY,
By J. E. GORMAN
President.

MARCUS L. BELL,
25 Broad Street,
New York.
W. F. DICKINSON,
W. F. PETER,
1025 LaSalle Street, Station,
Chicago, Ill.
Attorneys for Debtors.

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

J. E. GORMAN, being duly sworn, deposes and says that he is an officer, to wit, the President of each of the Debtors mentioned and described in the foregoing Petition, that is, St. Paul and Kansas City Short Line Railroad Company and Rock Island, Arkansas and Louisiana Railroad Company;

that he has read the foregoing Petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief.

J. E. GORMAN.

Subscribed and sworn to before me this 28 day of August, 1933.

W. J. GEDL
Notary Public.

(Seal).

And afterwards, to wit, on the 28th day of August, 1933, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

Order No. 10.

* * (Caption) * *

ORDER ON PETITION OF ST. PAUL AND KANSAS CITY SHORT LINE RAILROAD COMPANY AND ROCK ISLAND, ARKANSAS AND LOUISIANA RAILROAD COMPANY.

Upon due consideration of the Petition of St. Paul and Kansas City Short Line Railroad Company and Rock Island, Arkansas and Louisiana Railroad Company, the above named Debtors, verified August 28, 1933, and this day filed herein under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, showing that more than a majority of the capital stock of each of the said Debtors is owned by The Chicago, Rock Island and Pacific Railway Company, and that each of the said Debtors is unable to meet its debts as they mature, and that each of them desires to effect a plan of reorganization in connection with, or as part of, the plan of reorganization of The Chicago, Rock Island and Pacific Railway Company, Debtor herein, pursuant to said Section 77, and the Court being satisfied that the said Petition complies with said Section 77, and is filed in good faith, it is

Ordered:

1. That the Petition of St. Paul and Kansas City Short Line Railroad Company and Rock Island, Arkansas and Louisiana Railroad Company, Debtors, this day filed, be and

it is hereby approved as properly filed under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, and in this proceeding in which the Petition of The Chicago, Rock Island and Pacific Railway Company has been filed.

2. The Chicago, Rock Island and Pacific Railway Company, principal debtor herein, is authorized and directed to continue in possession of and to operate, the properties of the said Debtors, St. Paul & Kansas City Short Line Railroad Company and Rock Island, Arkansas & Louisiana Railroad Company; said possession and operation to be continued under all the terms and conditions of Order No. 1, entered herein June 7, and Order No. 1-A, entered herein June 8, 1933; and in all other respects the provisions of the said orders are extended to and made applicable to each of the said Debtors, St. Paul & Kansas City Short Line Railroad Company and Rock Island, Arkansas & Louisiana Railroad Company.

3. That the St. Paul and Kansas City Short Line Railroad Company and the Rock Island, Arkansas and Louisiana Railroad Company shall close their present books of accounts as of the close of business on August 31, 1933, and shall open new books of account as of the opening of business on the following day, and cause to be kept therein due and proper accounts of the earnings, expenses, receipts and disbursements of the Debtors, and shall preserve proper vouchers for all payments made on account thereof, and shall deposit the moneys coming into their hands in such of the banks in which funds of the Debtors are presently deposited as shall be selected by the respective Debtors, or in such other bank or banks as shall be selected by them and approved by this Court.

4. That within forty days after the entry of this Order, the Debtors joining in said petition shall file with the Clerk of this Court a statement of their assets and liabilities as of the close of business on August 31, 1933, and on or before the last business day of each calendar month thereafter shall file with said Clerk a statement of their assets and liabilities as of the close of business on the last day of the preceding month, together with a summary statement of their revenues and expenses of each such calendar month. Such statements may be made on a consolidated basis as to any Debtors all of whose capital stock is owned by any other Debtor. All such statements shall be certified as correct by the chief accounting officer of the respective Debtors.

5. That for cause shown, the time within which the Debt-

ors joining in said Petition shall prepare the lists of their bondholders, creditors and stockholders, and other information required by clause (c) of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy is hereby extended to October 15, 1933.

6. That this Court reserves full right and jurisdiction to make from time to time such orders as the Court shall deem proper, appointing a trustee or trustees of the Debtor's property and estate, with all the title and powers of such trustee or trustees under and subject to the provisions of the Acts of Congress relating to bankruptcy, including the power to operate the business of the Debtors, fixing the time within which any plan or reorganization shall be proposed, accepted, and confirmed, requiring the Debtors to file such schedules and submit such information as may be necessary to disclose the conduct of the Debtors' affairs and the fairness of any proposed plan, fixing a reasonable time within which claims and interests of creditors and stockholders may be filed or evidenced and allowed and the division of creditors and stockholders into classes according to the nature of their respective claims and interests, and in general such orders amplifying, extending, limiting, or otherwise modifying this Order as to the Court may at any time seem proper.

Signed:

JAMES H. WILKERSON
Judge.

Dated ....., 1933.

And on, to wit, the 28th day of August, 1933, came The Chicago, Rock Island & Pacific Railway Company, Debtor, by its attorneys and filed in the Clerk's office of said Court a certain Petition of Debtor respecting obligations Maturing September 1, in words and figures following, to wit:

Petition for Order No. 11.

* * (Caption) * *

PETITION OF DEBTOR RESPECTING OBLIGATIONS MATURING SEPTEMBER 1.

The Debtor, The Chicago, Rock Island and Pacific Railway Company, respectfully requests the instructions of the Court with reference to the payment of the following interest obligations due and payable September 1, 1933:

(a) Semi-annual interest on loans from Reconstruction Finance Corporation, as follows:		
(1) Loan of $1,187,500, dated September 1, 1932,	$35,917.80	
(2) Loan of $1,181,872, dated March 1, 1933,	$35,777.83	$ 71,695.63
(b) Semi-annual interest on $11,000,000 Rock Island, Arkansas and Louisiana 4½% First Mortgage Gold Bonds, due March 1, 1934, guaranteed as to principal and interest by the Debtor,		247,500.00
(c) Semi-annual interest on $40,000,000 Secured 4½% Gold Bonds, Series A, of the Debtor, due September 1, 1952,		900,000.00
Total		$1,219,195.63

The Debtor will have funds in its hands sufficient to pay the interest on the Reconstruction Finance Corporation loans, and, for the reasons stated in the Petition for Order No. 4, filed herein June 26, 1933, the Debtor recommends the payment of said interest.

1. Rock Island, Arkansas and Louisiana Railroad Company is a corporation of Arkansas and Louisiana, of which the entire capital stock (except directors' qualifying shares) is owned by the Debtor, and held free in its treasury. Said Company owns approximately 353.88 miles of railroad, and has trackage rights over 47.52 miles of road owned by other companies, all in Arkansas and Louisiana and all operated by the Debtor under a lease for 999 years, dated January 31, 1906. Under the terms of the lease, the Debtor, as lessee, is required to pay as rental the interest on the First Mortgage 4½% Gold Bonds of the lessor: and it is provided that the lease is terminable by the lessor or by the Trustee of the said First Mortgage, in the event of a default as described in the mortgage.

Said First Mortgage 4½% Gold Bonds are issued under and secured by the First Mortgage of said Company to Bankers Trust Company, of New York, as Trustee. Under this mortgage $14,862,000 of said bonds have been issued and are now outstanding, of which $11,000,000 are outstanding in the hands of the public and $3,862,000 are owned by the Debtor and pledged with the Reconstruction Finance Corporation as collateral for the loans described in Petition No. 4 herein. All of the said bonds are due and payable March 1, 1934, and

are guaranteed by indorsement by the Debtor as to both principal and interest. It is provided in said Mortgage that, in case default shall be made in the payment of interest on any of the said First Mortgage Bonds when and as the same shall become payable, and such default shall continue for a period of thirty days, the Trustee may, and on the written request of the holders of 25% in amount of the outstanding bonds, shall declare due the principal of all the said bonds then outstanding.

2. The Secured 4½% Gold Bonds, Series A due September 1, 1952, of the Debtor are secured until April 1, 1934, by the pledge as collateral of $45,000,000, face amount, of the Debtor's First and Refunding 4% Gold Bonds, due April 1, 1934. The Indenture of September 1, 1927, between the Debtor and the National City Bank of New York, as Trustee, under which the said Secured 4½% Gold Bonds, Series A, were issued provides that on or before the maturity of the said First and Refunding Mortgage, April 1, 1934, the Debtor will make a new mortgage which shall be a lien upon all the properties then subject to the First and Refunding Mortgage, including stocks, bonds and other securities, and that under the provisions of the said new mortgage all the Secured 4½% Gold Bonds, Series A, then outstanding will be secured equally and ratably pari passu with all obligations to be issued under the said new mortgage. It is further provided in the said Indenture that, in case default shall be made in the payment of interest on any of the Secured Gold Bonds when and as the same may become payable, and such default shall continue for a period of thirty days, the Trustee may, and upon the written request of the holders of 25% in amount of the bonds then outstanding, shall declare due the principal of all the said Secured Gold Bonds then outstanding, and may sell and convert into money all, or any part, of the $45,000,000 First and Refunding Bonds pledged as collateral therefor.

3. Debtor has not yet paid the interest due July 1, 1933, on its outstanding $61,581,000 General Mortgage 4% Gold Bonds, due January 1, 1988, the amount of said semi-annual interest being $1,231,620. The Court, by Order No. 4 entered herein June 26, 1933, authorized the Debtor to pay said interest when and as funds are available from the earnings of the trust estate. The Debtor now expects it will be in position to pay the said interest not later than November 1, 1933. As set forth in Petition No. 4 filed herein June 26, 1933, the default period provided by the general Mortgage for the payment of interest is six months.

4. Debtor also has been authorized, by Order No. 5 entered herein on July 26, 1933, to defer the payment of the interest due August 1, amounting to approximately $225,000, on the First Mortgage 4½% Gold Bonds, due February 1, 1941, of St. Paul and Kansas City Short Line Railroad Company, guaranteed as to principal and interest by the Debtor. Of the said First Mortgage Bonds, $27,232,500 have been issued in Dollar form and £119,200 in Sterling form, of which all the said bonds in Sterling form and $9,404,000 in Dollar form are outstanding in the hands of the public, and $17,828,500 in Dollar form are owned by the Debtor. Of the latter, $8,454,000 are pledged with various banks and $9,374,500 with the Reconstruction Finance Corporation, as set forth in Petition No. 4 herein. It is provided in said Mortgage that, in case default shall be made in the payment of interest on any of the First Mortgage Bonds when and as the same shall become payable, and such default shall continue for a period of thirty days, the Trustee may, and upon the written request of the holders of 25% in amount of the bonds then outstanding shall, declare the principal of all the said bonds due and payable.

The Debtor recommends that it be authorized to defer the payment of the interest due September 1, 1933, on the First Mortgage 4½% Gold Bonds of Rock Island, Arkansas and Louisiana Railroad Company and on the Debtor's Secured 4½% Gold Bonds, Series A due September 1, 1952.

Respectfully submitted,

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,

By J. E. GORMAN

President.

MARCUS L. BELL,
25 Broad Street,
New York.
W. F. DICKINSON,
W. F. PETER,
1025 LaSalle Street Station,
Chicago, Ill.
Attorneys for Debtor.

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

J. E. GORMAN, being duly sworn, deposes and says that he is an officer, to wit, President, of The Chicago, Rock Island and Pacific Railway Company, a railroad corporation, the petitioning Debtor mentioned and described in the foregoing petition; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes them to be true; also that the said petition is filed in good faith.

J. E. GORMAN.

Subscribed and sworn to before me this 28th day of August, 1933.
(Seal) W. J. GEDL.

And on, to wit, the 28th day of August, 1933, came the Protective Committee For the General Mortgage 4% Bonds of the Debtor by its attorneys and filed in the Clerk's office of said Court a certain Answer of the Protective Committee for the General Mortgage 4% Bonds of 1988 to the Petition of the Debtor for authority to pay interest due September 1, 1933, in words and figures following, to wit:

Answer to Petition No. 11.

* * (Caption) * *

ANSWER OF THE PROTECTIVE COMMITTEE FOR GENERAL MORTGAGE 4% BONDS OF 1988 TO THE PETITION OF THE DEBTOR FOR AUTHORITY TO PAY INTEREST DUE SEPTEMBER 1, 1933.

Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse are a Protective Committee with respect to the General Mortgage 4% Bonds of 1988 of the debtor, duly organized and acting pursuant to a Deposit Agreement dated as of the 7th day of July, 1933, and Alexander & Green are counsel for said Committee. Each of the members of the Protective Committee is a responsible officer of a life insurance corporation or of a sav-

ings bank which has a substantial sum invested in the General Mortgage 4% Bonds of 1988 of the debtor. More than one hundred and seventy-five holders of said bonds have filed their bonds with the Depositary designated in said Deposit Agreement, and each day the Depositary receives additional substantial sums of said bonds for deposit pursuant to said Deposit Agreement. The aggregate of the bonds so deposited already exceeds the sum of $9,000,000. Said Deposit Agreement provides that the Committee may oppose the granting of any orders which may be applied for before the Court, and may do and perform any and all acts which the Committee may deem necessary or proper for the protection of the interests of the bondholders.

Said Committee, therefore, now comes and for answer says,—

First. Said General Mortgage was made and bonds issued thereunder under date of January 1, 1898. The authorized issue is $100,000,000, of which bonds of the par value of $61,581,000 are now outstanding in the hands of the public, and bonds of the par value of $38,400,000 are said to be pledged as collateral security under the debtor's First and Refunding Mortgage dated April 1, 1904. Said General Mortgage bonds bear interest at four per cent, payable semi-annually. A semi-annual instalment of interest became due and payable on said General Mortgage bonds on the 1st day of July, 1933, but the debtor did not pay, nor cause to be paid, said instalment of interest or any part thereof, and defaulted in that behalf.

Second. The payment when due of the principal of and interest on said General Mortgage bonds is secured by a mortgage indenture of even date with the bonds which conveys to the Trustee thereunder more than 3,000 miles of railway upon which the General Mortgage is a first lien, and also conveys to the Trustee all property of the debtor then owned and thereafter acquired by it or its successors and appertaining to and provided for use in connection with any of the railways therein described and other property, including "all and singular the * * * tolls, income, rents, issues and profits thereof."

At page 48, the General Mortgage authorizes the Trustees thereunder, in the event of default for six months in the payment of interest, to take possession of the mortgaged prop-

erty, to operate it, "to collect and receive all tolls, earnings, income, rents, issues and profits of the same", and after paying expenses and costs of operation to apply the current net earnings "to the payment of the interest in default in the order of the maturity of the instalments of such interest, with interest thereon at the same rate of interest as was borne by the bond on which such interest shall be in default."

Third. The prior orders providing for payments of interest to the Reconstruction Finance Corporation and the banks, orders Nos. 4 and 5, are not precedents for the proposed order relating to the September 1st payments. Order No. 4 was made on June 26, 1933, prior to the formation of the Protective Committee for the General Mortgage Bonds, and, as the said Committee is informed, without notice to the Trustees of the General Mortgage. Order No. 5 was dated July 26, 1933, and was entered on said day. No notice of the application for said order and opportunity to be heard in respect thereto was given to said Committee or, so far as said Committee is informed, to the Trustees of the General Mortgage, and they were not heard in respect thereto.

Fourth. The Protective Committee for The Chicago, Rock Island & Pacific Railway Company General Mortgage 4% Bonds Due January 1, 1988, has not yet filed a petition for leave to intervene in this proceeding. It intends to do so at a later date. This affidavit is filed by the Committee for the information of the Court on its own behalf and on behalf of the bondholders which it is authorized to represent under the terms of the Deposit Agreement, without prejudice to any right of the Committee or of the bondholders represented by the Committee to object to any further petitions or orders relating to subsequent proposed payments of interest to the Reconstruction Finance Corporation or other creditors.

Wherefore, the holders of the General Mortgage bonds object to the payment of interest falling due September 1, 1933, on the Reconstruction Finance Corporation's loan, and object to the payment of interest on any other debt of the debtor before the defaulted interest on the General Mortgage bonds is paid in full, with interest from the date of the default to the date of payment, as provided for in the General Mortgage, at the same rate of interest as the bonds bear, and insist that the instalment of interest that became due July 1, 1933, on the outstanding General Mortgage bonds

should be paid before interest, which became due subsequent to July 1, 1933, is paid on any other debt of the debtor.

LEON O. FISHER,
ROBERT DECHERT,
STACY B. LLOYD,
JAMES LEE LOOMIS,
ROBERT H. STENHOUSE,
Protective Committee
By EDWARD W. BOURNE,
Secretary.

ALEXANDER & GREEN,
Attorneys for Protective Committee,
Office and P. O. Address,
120 Broadway,
Borough of Manhattan,
City of New York, N. Y.

State, County and City of New York, } ss:

EDWARD W. BOURNE, being first duly sworn, deposes and says that he is the Secretary of the Protective Committee for the General Mortgage bonds of the debtor and is authorized by said Committee to make this verification; that he has read the foregoing answer and knows the contents thereof, and that the facts stated and allegations made therein are true to his own knowledge, except as to those matters alleged upon information and belief, and as to those matters he believes it to be true.

EDWARD W. BOURNE.

Subscribed in my presence and sworn to before me this 25th day of August, 1933.

R. Damm,
(Seal) *Notary Public, Kings County, N. Y. No.* 139.
Certificate Filed New York County No. 358.
Kings County Register's No. 4142.
New York County Register's No. 4 D 200.
Commission expires March 30, 1934.

And afterwards, to wit, on the 28th day of August 1933, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

Order No. 11.

* * * (Caption) * * *

ORDER RESPECTING OBLIGATIONS MATURING SEPTEMBER 1, 1933.

On this day coming on to be heard the petition of the Debtor, respecting interest obligations maturing September 1, 1933, and the Court having heard the statements of Counsel, and being fully advised in the premises, it is

Ordered:

That the Debtor be and it hereby is authorized to pay the following obligations due September 1, 1933:

Semi-annual interest on loans from Reconstruction Finance Corporation, as follows:

Loan of $1,187,500, dated September 1, 1932	$35,917.80
Loan of $1,181,872, dated March 1, 1933	35,777.83
Total	$71,695.63

It Is Further Ordered:

That the Debtor be and it hereby is authorized to defer the payment of interest due September 1 on the First Mortgage 4½% Gold Bonds of Rock Island, Arkansas and Louisiana Railroad Company, and on the Secured 4½% Gold Bonds, Series A, of The Chicago, Rock Island and Pacific Railway Company.

Signed: JAMES H. WILKERSON,
Judge.

Dated Aug. 28, 1933.

And on, to wit, the 26th day of September, 1933, came The Chicago, Rock Island & Pacific Railway Company, Debtor, by its attorneys and filed in the Clerk's office of said Court a certain Petition respecting the payment of interest on its Collateral loans, and a certain notice and affidavit of Marcus L. Bell, in words and figures following, to wit:

Petition for Order No. 15.

• • (Caption) • •

PETITION OF DEBTOR, THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, RESPECTING THE PAYMENT OF INTEREST ON ITS COLLATERAL LOANS.

Filed Sep. 26, 1933, Charles M. Bates, Clerk.

And now comes the Debtor, The Chicago, Rock Island and Pacific Railway Company, and respectfully asks the instructions of the Court with respect to the payment of interest on its collateral loans.

1. It is indebted to the Reconstruction Finance Corporation in the sum of $13,659,877.58, evidenced by six notes, dated, and in amounts as follows:

June 27, 1932—(Balance due on note of $1,500,000)	$ 1,441,177.58
June 30, 1932	2,000,000.00
August 1, 1932	5,312,500.00
September 1, 1932	1,187,500.00
March 1, 1933	1,181,872.00
April 1, 1933	2,536,828.00
Total	$13,659,877.58

All of the said notes are due and payable March 1, 1934, and all bear interest at the rate of 6% per annum, payable semi-annually. The first four notes above mentioned were approved by the Interstate Commerce Commission in Finance Docket No. 9384; the last two in Finance Docket No. 9835.

All the said notes are secured by the pledge of the following collateral:

Listed Collateral:

The Chicago, Rock Island and Pacific Railway Company First and Refunding 4% Gold Bonds	$ 7,575,000.00
St. Paul and Kansas City Short Line Railroad Company First Mortgage 4½% Gold Bonds.	9,374,500.00
Rock Island, Arkansas and Louisiana Railroad Company First Mortgage 4½% Gold Bonds	3,862,000.00
Total	$20,811,500.00

Unlisted Collateral:	
The Chicago, Rock Island and Gulf Railway Company Extension First Mortgage 5% Bonds	$ 6,927,000.00
The Chicago, Rock Island and Gulf Railway Company Carrollton Branch 6% Bonds	331,000.00
Kankakee & Seneca Railroad Company 4½% Bonds	352,000.00
Rock Island and Dardanelle Railway Company First Mortgage 5% Bonds	100,000.00
Rock Island Memphis Terminal Depot First Mortgage 5% Bonds	900,000.00
Rock Island Memphis Terminal Terminal First Mortgage 5% Bonds	400,000.00
Rock Island Omaha Terminal First Mortgage 5% Bonds	906,000.00
Rock Island Improvement Company:	
Blue Island Shops Bonds	199,000.00
Cedar Rapids Terminal Bonds	369,732.99
Little Rock Mortgage Bonds	278,492.49
Peoria Terminal Mortgage Bonds	290,247.86
First and Collateral 5% Bonds	3,310,000.00
Trinity & Brazos Valley Receiver's Certificates	747,492.51
Trinity & Brazos Valley First Mortgage Bonds (now pledged under Colorado & Southern Mortgage; C. R. I. & P. has agreed to pledge them with Reconstruction Finance Corporation upon release from that Mortgage May 1, 1935)	4,380,000.00
Total	$19,490,965.85
Assignment of Company's distributive share in assets of Railroad Credit Corporation, approximately	$ 1,400,000.00

All the unlisted collateral referred to above consists of First Mortgage Bonds of subsidiary companies of the Debtor's system.

2. All the interest on the said loans has been paid to the date hereof, the next instalment being due October 1, 1933, on the note last mentioned above, in the sum of $76,313.34.

3. The Debtor shows to the Court that it is indebted to various banks in the amounts shown below, all of said indebtedness being evidenced by notes payable to the respective banks, dated August 1, 1932, due March 1, 1934, and secured by the collateral as indicated below:

		Amount of Loan
1. Chase National Bank, New York.....		$2,000,000
Collateral—		
First and Refunding 4% Gold Bonds	$3,253,000	
St. Paul and Kansas City Short Line 4½% Gold Bonds.....	3,956,000	
	$7,209,000	
2. Continental Illinois Bank and Trust Company, Chicago		1,250,000
Collateral—		
First and Refunding 4% Gold Bonds	$1,307,000	
St. Paul and Kansas City Short Line 4½% Gold Bonds.....	2,758,000	
	$4,065,000	
3. New York Trust Company, New York.....		500,000
Collateral—		
First and Refunding 4% Gold Bonds	$ 800,000	
St. Paul and Kansas City Short Line 4½% Gold Bonds.....	1,010,000	
	$1,810,000	
4. Harris Trust and Savings Bank, Chicago...		250,000
Collateral—		
First and Refunding 4% Gold Bonds	$ 405,000	
St. Paul and Kansas City Short Line 4½% Gold Bonds	490,000	
	$ 895,000	
5. Mississippi Valley Trust Company, St. Louis		125,000
Collateral—		
First and Refunding 4% Gold Bonds	$ 190,000	
St. Paul and Kansas City Short Line 4½% Gold Bonds.....	240,000	
	$ 430,000	
Total bank loans.....		$4,125,000

By their terms the said notes bear interest at the rate of 6% per annum, but, by agreement with the various banks, the rate of interest on the said loans has been reduced to 5½% per annum, from and after August 1, 1933. Certain of said banks have applied against the face amount of the said notes as indicated above the Debtor's deposits in their hands as of June 7, 1933, the amounts so applied being as follows:

Continental Illinois Bank and Trust Company.$242,403.74
Mississippi Valley Trust Company..... 15,672.92

The other banks mentioned have not applied the Debtor's deposits against the face of their notes. Interest on all of the said bank loans has been paid to August 1, 1933, pursuant to Order No. 5, entered herein July 26, 1933, and by the terms of the said notes no further payment of interest will be due thereon until February 1, 1934.

4. The Debtor attaches to this Petition, as Exhibit A hereto, a copy of its note of August 1, 1932, to the Reconstruction Finance Corporation. All of the said notes to the Reconstruction Finance Corporation are in substantially the same form as Exhibit A, except as to the description of the collateral. The Debtor also attaches, as Exhibit B hereto, copy of an agreement, dated as of August 1, 1932, between the Reconstruction Finance Corporation, the various banks, and the Debtor, concerning the indebtedness of the Debtor to the said banks, which said agreement contains, as Exhibit A thereto, the form of the Debtor's notes to said banks. All of the said notes to said banks are in substantially the form of said Exhibit A to the agreement of August 1, 1932. In and by the terms of the notes to the banks, as set forth therein, a default in the payment of the interest on any of the Reconstruction Finance Corporation loans will amount to a default in each of the said notes to the banks.

5. The value of the collateral securing each of the said collateral loans referred to above is substantially in excess of the amount of the respective loans; and if the holders of the said notes should convert or sell the same, it would cause a substantial and irreparable loss to the trust estate; and in case of a forced sale of the said collateral at the present time, it might result in a substantial deficiency judgment against the Debtor herein, and would dilute the respective interests in the trust estate of the holders of the First and Refunding Bonds, the St. Paul and Kansas City Short Line 4½% First Mortgage Gold Bonds and the Rock Island, Arkansas and Louisiana 4½% First Mortgage Gold Bonds, and of all the other creditors of the trust estate, in proportion to the rank

and lien of the obligations by which their claims or interests therein are evidenced, and of this Debtor as the owner of the trust estate.

6. The Debtor has been unable to pay interest on its funded debt, secured by mortgage lien on various portions of its property, as follows:

(a) Interest due July 1, 1933, on $61,581,000 General Mortgage 4% Gold Bonds, due January 1, 1988 ..... $1,231,620

(b) Interest due August 1, 1933, on $9,982,120 St. Paul and Kansas City Short Line 4½% First Mortgage Gold Bonds, due February 1, 1941, guaranteed as to principal and interest by the Debtor, approximately 225,000

(c) Interest due September 1, 1933, on $11,000,000 Rock Island, Arkansas and Louisiana 4½% First Mortgage Gold Bonds, due March 1, 1934, guaranteed as to principal and interest by the Debtor 247,500

The Debtor also has failed to pay the interest due September 1, 1933, on $40,000,000 of its Secured 4½% Gold Bonds, Series A, due September 1, 1952, which are secured by the pledge as collateral of $45,000,000 First and Refunding Bonds, amounting to $900,000.

The Debtor will not have sufficient funds to pay the following interest obligations due October 1, 1933, and will be obliged to defer the payment thereof:

(a) Semi-annual interest on $11,000,000 Burlington, Cedar Rapids and Northern Consolidated First Mortgage 5% Gold Bonds, due April 1, 1934 ..... $ 275,000

(b) Semi-annual interest on $104,470,000 First and Refunding 4% Gold Bonds of the Debtor, due April 1, 1934 2,089,400

7. The period of grace provided in the various indentures securing the said bonds which must elapse before the respective trustees thereof are authorized to avail themselves of the remedies contained in the said indentures is as follows:

General Mortgage ..... Six months.
St. Paul and Kansas City Short Line First Mortgage ..... Thirty days.
Rock Island, Arkansas and Louisiana First Mortgage ..... Thirty days.
Burlington, Cedar Rapids and Northern Consolidated First Mortgage ..... Six months.

First and Refunding Mortgage.....Six months.
Indenture securing 4½% Secured Gold Bonds,
Series A due September 1, 1952.....Thirty days.

8. The earnings of the trust estate are not sufficient at this time to provide for the payment of interest on all the funded debt of the Debtor which is secured by lien on the Debtor's property prior in rank and lien to the interest on the collateral loans set forth above.

9. Protective Committees have been formed for various issues of the Debtor's securities, as follows:

General Mortgage 4% Gold Bonds, due January 1, 1988.
First and Refunding 4% Gold Bonds, due April 1, 1934.
Secured 4½% Gold Bonds, Series A, due September 1, 1952.
Burlington, Cedar Rapids and Northern 5% Gold Bonds, due April 1, 1934.
St. Paul and Kansas City Short Line 4½% Gold Bonds, due February 1, 1941.
Rock Island, Arkansas and Louisiana 4½% Gold Bonds, due March 1, 1934.
Thirty-Year 4½% Convertible Gold Bonds, due May 1, 1960.

Several of the said Protective Committees have protested to the Debtor against the payment of interest on the collateral loans set forth above, and certain of said committees, representing large amounts of the Debtor's funded debt, have asserted to the Debtor that, even if default be made in the payment of such interest, the holders of said collateral have no right or authority to sell or convert the same, or to apply the same, or any part thereof, in payment or reduction of their loans.

10. The Debtor has caused notice of the filing and presentation of this petition, together with a copy of this petition, to be served on each of the said banks and on the Reconstruction Finance Corporation; also on the Trustee, or Trustees, of each mortgage or trust indenture evidencing a lien on any part of the Debtor's property, and on the Trustee of the Indenture securing the Debtor's Secured 4½% Gold Bonds, Series A due September 1, 1952, and upon the Trustee of the Indenture securing the Thirty-Year Convertible 4½% Gold Bonds of the Debtor, due May 1, 1960; and on the Trustee of each of the Debtor's Equipment Trusts; also upon each of the Bondholders' Protective Committees referred to above.

Wherefore, the Debtor asks the instructions of the Court as to the payment of the interest due October 1, 1933, in the

sum of $76,313.34, on the loan of $2,536,828, from Reconstruction Finance Corporation; and asks that the Court determine whether the Court should enjoin and restrain the holders of the said collateral notes, in the event of default in the payment of interest thereon, or other default therein, from selling and converting the said collateral, or any part thereof; and, if the Court shall be of the opinion that the holders of said notes should be enjoined and restrained as aforesaid, the Debtor prays that the Reconstruction Finance Corporation and each of the said banks be restrained and enjoined from converting, selling, or otherwise disposing of the said collateral, or any part thereof, until the further order of this Court; and for such other and further relief as to the Court may seem proper.

Respectfully submitted,
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,
By J. E. GORMAN
President.

MARCUS L. BELL,
25 Broad Street,
New York.
W. F. DICKINSON,
W. F. PETER,
1025 LaSalle Street Station,
Chicago, Illinois,
Attorneys for Debtor.

United States of America,
Northern District of Illinois, } ss.:
Eastern Division.

J. E. GORMAN, being duly sworn, deposes and says that he is an officer, to wit, President, of The Chicago, Rock Island and Pacific Railway Company, a railroad corporation, the petitioning Debtor mentioned and described in the foregoing petition; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes them to be true; also that the said petition is filed in good faith.

J. E. GORMAN.

Subscribed and sworn to before me this 26th day of September, 1933.

W. J. GEDL,
Notary Public.

(Seal)

EXHIBIT A.

Note.

New York, New York.
August 1, 1932.

$5,312,500.00—

On or before March 1, 1934, The Chicago, Rock Island and Pacific Railway Company, a corporation of the States of Illinois and Iowa (hereinafter called the "Railroad Company"), for value received, promises to pay to the Reconstruction Finance Corporation (hereinafter called the "payee"), or order, at the Federal Reserve Bank of New York, in New York City, New York, in gold coin of the United States of America of the present standard of weight and fineness, Five Million Three Hundred Twelve Thousand Five Hundred Dollars ($5,312,500.00), with interest at the rate of six per cent (6%) per annum from the date hereof, payable semi-annually, on the first days of February and August in each calendar year and on March 1, 1934, until payment of said principal sum, with the option on the part of the Railway Company to repay the whole or any part of said principal sum, with accrued interest thereon, at any time before maturity; having deposited with the said payee as collateral security for the payment of this note or any extension or renewal thereof, or for the payment of any other liability or liabilities of the Railway Company to the said payee due or to become due, or which may hereafter be contracted or existing, including among said liabilities a note of the Railway Company for $1,500,000, and a note of the Railway Company for $2,000,000, both maturing March 1, 1934, the following described property, which is to be applied pari passu and without preference to all of said notes and other liability or liabilities:

$6,927,000.00 The Chicago, Rock Island and Gulf Ry. Co. Extension First Mortgage 5% bonds of 1960.

$ 331,000.00 The Chicago, Rock Island and Gulf Ry. Co. Carrollton Branch First Mortgage 6% bonds of 1937.

$ 352,000.00 Kankakee & Seneca RR. Co. General Mortgage Series A 4½% Bonds of 2020.

$ 100,000.00 Rock Island & Dardanelle Ry. Co. First Mortgage 5% Bonds of 1934.

$ 900,000.00 Rock Island Memphis Terminal Ry. Co. Depot First Mortgage 5% Bonds of 1934.

$ 400,000.00 Rock Island Memphis Terminal Ry. Co. Terminal First Mortgage 5% Bonds of 1934.
$ 600,000.00 Rock Island Omaha Terminal Ry. Co. First Mortgage 5% bonds of 1934.
$ 199,000.00 Rock Island Improvement Co. Blue Island Shops Mortgage 5% Bonds of 1934.
$ 369,732.99 Rock Island Improvement Co. Cedar Rapids Terminal Mortgage 5% Bonds.
$ 278,492.49 Rock Island Improvement Co. Little Rock Mortgage 5% Bonds.
$ 290,247.86 Rock Island Improvement Co. Peoria Terminal Mortgage 5% Bonds.
$6,435,000.00 The Chicago, Rock Island and Pacific Ry. Co. First and Refunding Mortgage 4% Bonds of 1934.
$9,154,000.00 St. Paul and Kansas City Short Line RR. Co. First Mortgage 4½% Bonds of 1941.

The Railway Company hereby agrees, on demand of the payee, to deposit with the payee such additional security as it may from time to time demand, and further agrees that the securities hereby pledged, together with any that may be pledged hereafter or may have been pledged heretofore as security for this or any other obligation of the Railway Company to the payee, shall be applicable in like manner to secure the payment of any and all such obligations. And all such securities in the hands of the payee shall stand as one general continuing collateral security for the whole of said obligations so that the deficiency on any one may be made good by enforcement of the rights and remedies of the payee in respect of the sale of collateral or otherwise as to the rest. And the Railway Company hereby gives to the payee a lien for the amount of all the liabilities aforesaid upon all other property of the Railway Company at any time coming into the possession of the payee. And the Railway Company hereby agrees to remain responsible for any deficiency in payment, waiving any benefit, exemption, or privilege under any law now or hereafter to be in force.

The Railway Company further agrees that on the nonperformance of the foregoing agreement to furnish additional security upon demand of the payee and/or upon nonperformance of any of the covenants or agreements of the Company with the Interstate Commerce Commission or the Reconstruction Finance Corporation and/or the payee as hereinafter defined, or upon the nonpayment of this note, or

of any of the other above mentioned liabilities, or upon default in payment of interest on any of the said liabilities as the same may become due, or upon the nonfulfillment of any of the terms or conditions of this note, or if the Company shall become insolvent (however such insolvency may be evidenced) or if the Company shall suspend the transaction of its usual business, or if a receiver shall be appointed of, or a writ or order of attachment or garnishment shall be issued or made against any property or assets, or any part thereof, of the Company, thereupon, unless the payee shall otherwise elect, this note and the said liability or liabilities shall become and be due and payable forthwith, without presentation, demand, protest, notice of protest or other notice of dishonor of any kind, all of which are hereby waived, and the payee is hereby authorized to sell, assign, transfer, and deliver any or all of said securities or interest therein or any substitute therefor, or any additions thereto, or any such other property, at such time or times, to such person or persons, and in such several parts or parcels as the payee may decide, and to sell the whole or any of such parts or parcels or interest therein, either at any broker's board or at public or private sale, either for cash, upon credit, or for future delivery, at the option of the payee, without demand, advertisement, or notice of the time or place of sale or adjournments thereof which are hereby expressly waived.

In case of any sale by the payee in pursuance of the terms of the last preceding paragraph of any or all of said securities or interest therein or other property on credit or for future delivery, such securities or such interest therein or such other property shall remain vested in and shall be retained by the payee until the sale price therefor be paid by the purchaser, but the payee shall incur no liability in case of failure by the purchaser to take up and pay for such securities or such interest or such other property so sold. In case of any such failure the payee shall have the same right to dispose of said securities and interest therein and such other property as are given in the last preceding paragraph to the same effect as though no sale had theretofore been made.

At any sale under the provisions of this instrument, the payee may itself purchase the whole or any part of the securities sold or interest therein or other property, free from all right of redemption on the part of the Railway Company, which right is hereby waived and released. In case of any sale the payee may first deduct all expenses incident to the

collection, sale, and delivery of the securities or property so sold, and any other expenses incurred by the payee in connection with such sale; and may then apply the residue to any one, or more, or all, of said liabilities, whether due or not due, returning the overplus, if any, to the Railway Company, which shall remain liable to the payee for any deficiency remaining or existing after such sale. And the Railway Company hereby further authorizes the payee, at its option, at any time, to appropriate and apply to the payment of any of the aforesaid liabilities, whether now existing or hereafter contracted, any and all property now or hereafter in the hands of the payee belonging to the Railway Company, whether the aforesaid liabilities are then due or not due.

The Railway Company further agrees that, upon any transfer of this note, the payee may deliver the securities or property held as security, or any part thereof, or interest therein, to the transferee, who shall thereupon become vested with all the powers and rights above given to the payee in respect thereto for the purpose of securing and enforcing the payment to the holder of the whole or any part of the indebtedness evidenced by this note. And the payee shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter to the Railway Company or to its successors or assigns.

The Railway Company and indorsers and guarantors hereby waive presentment, protest, and notice of dishonor, and agree to remain bound for the payment of this note and all interest and charges thereon, and that the lien hereof and the pledge hereunder shall remain undisturbed, not withstanding any extension of time, substitution of collateral, or other indulgence granted by the holder of this note, hereby waiving all notice of such extension, substitution, or other indulgence.

In the event this note, or any part thereof, is collected by an attorney, either with or without suit, the Railway Company agrees to pay a reasonable attorney's fee and cost of collection.

The term payee shall mean and include the Reconstruction Finance Corporation and/or any successor, or assign, or liquidator, or transferee of the Reconstruction Finance Corporation or any other transferee of this note.

In Witness Whereof, The Railway Company has caused this note to be executed by its president or vice president and

its corporate seal to be hereunto affixed by its secretary or assistant secretary, this 1st day of August, 1932.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,

By MARCUS L. BELL
Vice President.

Attest:
J. C. COMPTON
Assistant Secretary.

EXHIBIT B.

Agreement dated as of the 1st day of August, 1932, between Reconstruction Finance Corporation, hereinafter sometimes referred to as "Reconstruction," The Chase National Bank of the City of New York, The New York Trust Company, Continental Illinois Bank and Trust Company, Harris Trust and Savings Bank of Chicago, Illinois, and Mississippi Valley Trust Company of St. Louis, Missouri, the said banks and trust companies being hereinafter sometimes referred to as the "Banks," and The Chicago, Rock Island and Pacific Railway Company, hereinafter sometimes referred to as the "Railway Company."

Whereas, the Interstate Commerce Commission, by its certificate of approval of June 15, 1932, approved a loan of $10,000,000. by Reconstruction to the Railway Company, said loan to be made in installments as therein provided; and

Whereas, said loan was duly authorized by the Board of Directors of Reconstruction; and

Whereas, certain of the collateral to be pledged as security for the said $10,000,000. loan is held by the Banks; and

Whereas, the said Banks are the holders of loans owed to them by said Railway Company aggregating $8,250,000. maturing on August 1, 1932; and

Whereas, the Interstate Commerce Commission, by its certificate of approval of June 15, 1932, as modified by order of said Commission dated June 25, 1932, with reference to said loan of $10,000,000. to be made in installments by Reconstructi n to said Railway Company, provided in part as follows:

"That before any advance upon the loan is made, The Chicago, Rock Island & Pacific Railway Company deposit with the Reconstruction Finance Corporation binding commitments of the then holders of those obligations, or other evidence satisfactory to that corporation, that 50 percent of

bank loans aggregating $8,250,000 will be extended to maturity dates not earlier than the maturity date of the loan herein conditionally approved."

and

Whereas, in accordance with said provision, each of the Banks delivered to Reconstruction Finance Corporation at the time of the first advance on the loan above mentioned their several agreements to extend 50% of bank loans held by them aggregating $8,250,000. to maturity dates not earlier than March 1, 1934, the maturity date of the above mentioned loan to said Railway Company.

Now, Therefore, This Agreement Witnesseth:

First: Upon the payment to the Banks of 50% of the bank loans hereinafter mentioned with interest, the Banks severally agree to extend 50% of the bank loans held by them to March 1, 1934, and to take as evidence of such extended debt notes substantially in the form hereto annexed and marked Exhibit A and made a part hereof as fully as though set forth at length herein. The loans held by the said Banks maturing August 1, 1932, 50% of which is to be extended, are as follows:

The Chase National Bank of the City of New York	$4,000,000.00
The New York Trust Company	1,000,000.00
Continental Illinois Bank and Trust Company	2,500,000.00
Harris Trust and Savings Bank	500,000.00
Mississippi Valley Trust Company	250,000.00
	$8,250,000.00

Second: The Banks severally agree forthwith to deliver to Reconstruction one-half of the bonds of each of the following issues now held by them as collateral, it being understood that the aggregate amount to be so delivered is the amount stated after the name of each issue respectively:

The Chicago, Rock Island & Pacific Railway Company first and refunding mortgage 4 per cent bonds of 1934	$6,435,000.
St. Paul & Kansas City Short Line Railroad Company first-mortgage 4½ per cent bonds of 1941	$9,154,000.

Third: Reconstruction agrees that in the event it obtains any additional collateral other than that already held by it and other than the bonds above mentioned to be delivered by the Banks to Reconstruction, except such collateral as may be received in connection with advances beyond the $10,000,-

000. loan above mentioned, it will hold such additional collateral for the pro rata benefit of Reconstruction and of the Banks proportionately to the amount of the respective loans to said Railway Company by Reconstruction and by the said Banks other than loans by Reconstruction beyond the $10,000,000. loan above mentioned; and that should Reconstruction obtain additional collateral in connection with any such further advances it will similarly hold any surplus remaining after such additional advances have been paid.

Fourth: The Banks severally agree that so long as the said loan to Reconstruction of $10,000,000. or any part thereof is outstanding, they will make no demands upon the said Railway Company for additional collateral, nor will they take any additional collateral, for the indebtedness of said Railway Company to them, except with the written consent of Reconstruction.

Fifth: In the event any demands for additional collateral are thought advisable by the Banks or any of them, they may request such demands to be made by Reconstruction, and if Reconstruction in its discretion deems such demands to be advisable and any such collateral is obtained by Reconstruction, Reconstruction agrees to hold the same in accordance with the terms of Paragraph Third of this agreement.

Sixth: In the event that Reconstruction does not deem it advisable to demand such additional collateral, the Banks severally agree that they will make no such demand. The Banks further agree that should they obtain any additional collateral except with the written consent of Reconstruction they will forthwith deliver the same to Reconstruction to be held by Reconstruction in accordance with the terms of this agreement.

Seventh: The Railway Company agrees that without the written consent of Reconstruction it will not pledge any collateral for any loans now or hereafter existing and owing by it.

Eighth: This agreement may be executed in several counterparts, no one of which need be executed by all of the parties hereto, and each counterpart shall be an original instrument and all collectively shall be but one instrument.

In Witness Whereof, the parties have caused this instrument to be executed in their respective corporate names by their respective officers or representatives thereunto duly authorized and have caused their corporate seals to be hereto affixed and attested, all as of the day and year first above written.

RECONSTRUCTION FINANCE CORPORATION
By HUGH LEACH
Treasurer

(Corporate Seal)
Attest:
G. R. COOKSEY
Secretary

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK
By L. H. JOHNSTON
Vice President

(Corporate Seal)
Attest:
A. BENDER
Assistant Cashier

THE NEW YORK TRUST COMPANY
By J. MURRAY MITCHELL
Vice President

(Corporate Seal)
Attest:
H. J. STROH
Assistant Treasurer

CONTINENTAL ILLINOIS BANK AND TRUST COMPANY
By J. H. HOGAN
Vice President

(Corporate Seal)
Attest:
C. E. CLIPPINGER
Assistant Secretary

HARRIS TRUST AND SAVINGS BANK
By JOHN S. BROCKSMIT
Vice President

(Corporate Seal)
Attest:

.....
Assistant Secretary.

MISSISSIPPI VALLEY TRUST COMPANY
By O. A. ROWLAND
Vice President

Attest:
C. H. TURNER, JR.
Secretary

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY
By MARCUS L. BELL
Vice President.

(Corporate Seal)
Attest:
J. C. COMPTON
Assistant Secretary.

(The acknowledgments have been omitted in this printed copy.)

(EXHIBIT "A")

New York City, New York,
$..... August 1, 1932.

On, or at its option before, March 1, 1934, Chicago, Rock Island & Pacific Railway Company, hereinafter called the "Company," for value received, promises to pay to .... hereinafter called the "payee," or order, at its head office or banking house in the City of New York in gold coin of the United States of America of the present standard of weight and fineness .... Dollars, with interest at the rate of six per cent. (6%) per annum from the date hereof, payable semi-annually on the first day of February and the first day of August in each calendar year until the said principal sum shall be fully paid, with the option on the part of the Company to pay any part of said principal sum, with interest accrued thereon, at any time before maturity; having deposited with the payee as collateral security for the payment of this note or any extension or renewal thereof, or of any part thereof, or for the payment of any other liability or liabilities of the Company to the payee due or to become due, or now or hereafter existing or contracted, the following described property:

The term "security" as herein used shall include any deposit account maintained by the Company with the payee or any other claim of the Company against the payee, all money, negotiable instruments, commercial paper, bonds, stocks, credits, choses in action, claims, demands, or any interest in any thereof, and any other property rights and interests of the Company, or any evidence thereof, which have been or at any time shall be delivered to the payee or any of its agents, associates or correspondents, for any purpose, whether or not accepted for the purpose or purposes for which they are delivered; and all such money, negotiable instruments, commercial paper, bonds, stocks, credits, choses in action, claims, demands, or any interest in any thereof, and any other property, rights and interests, or any evidence thereof, as have or shall come into the possession, control or custody of the payee or of any of its agents, associates or correspondents, or others acting in its behalf, for account, subject to the order, or otherwise for the benefit or under the control of the Company. The payee shall be deemed to have possession, control or custody

of any security actually in transit to or set apart for it or any of its agents, associates, correspondents or others acting in its behalf.

As security for the payment of the foregoing note and/or of any and all such liabilities, the Company hereby pledges to the payee all such security capable of pledge and bargains, sells, assigns and transfers to the payee, and/or gives it a general lien upon, all right, title and interest of the Company in and to any thereof incapable of pledge or inadequately pledged, such pledge and/or sale, assignment, transfer and/or lien being made or created for the protection and security of the payee and/or any other or others (but pro rata if held for the benefit of more than one) for whom it has acted or shall act as agent in connection with the creation of any such liability; and in trust for the benefit, and to the extent of the interest, of any such other or others herein.

The Company hereby agrees that the security hereby pledged, together with any that may be pledged hereafter or may have been heretofore pledged as security for this or any other obligation of the Company to the payee, shall be applicable in like manner to secure the payment of any and all such obligations. And all such security in the hands of the payee shall stand as one general continuing collateral security for the whole of said obligations so that the deficiency on any one may be made good by enforcement of the rights and remedies of the payee in respect of the sale of collateral or otherwise as to the rest. And the Company hereby agrees to remain responsible for any deficiency in payment, waiving any benefit, exemption, or privilege under any law now or hereafter to be in force.

The Company further agrees that, upon non-performance of any of the covenants or agreements of the Company with the Interstate Commerce Commission or the Reconstruction Finance Corporation and/or the payee, or upon the non-payment of this note, or of any of the other above mentioned liabilities, or upon default in payment of interest on any of the said liabilities as the same may become due, or upon the non-fulfillment of any of the terms or conditions of this note, or if the Company shall become insolvent (however such insolvency may be evidenced) or if the Company shall suspend the transaction of its usual business, or if a receiver shall be appointed, of, or a writ or order of attachment or garnishment shall be issued or made against any property or assets, or any part thereof, of the Company, thereupon, unless the payee shall otherwise elect, this note shall become and be due

and payable forthwith, without presentation, demand, protest, notice of protest or other notice of dishonor of any kind, all of which are hereby waived.

Upon default of any kind hereunder, the payee may sell in the Borough of Manhattan, New York City, or elsewhere, in one or more sales or parcels, at such price or prices as the payee may deem advisable, for cash or on credit, or for future delivery, all or any of the security held for the payment of this note, at any broker's board or at public or private sale, without demand of performance or notice of intention to sell or of time or place of sale, and the payee may be the purchaser of any or all property, rights and/or interests so sold and thereafter hold the same absolutely free from any claim or right of whatsoever kind, including any equity of redemption, of the Company, any such demand, notice or right and equity being hereby expressly waived and released. The Company will bear and pay all expenses (including expenses of legal services of every kind) of, or incidental to, the enforcement of any of the provisions hereof or of any actual or attempted sale and will repay to the payee any such expense incurred; and such expense shall be deemed an indebtedness or liability of the Company to the payee within the terms of this agreement. The payee, at any time, at its option, may apply all or any of the net cash receipts from or on account of any of the security to the payment in whole or in part of any or all of the liabilities or obligations of the Company to the payee, applying or distributing the same as the payee shall elect, whether or not the item or items on which such payment is applied, by its terms, be due, making proper rebate of any prepaid interest or discount in case of payment of any item not so due.

In case of any sale by the payee in pursuance of the terms of the last preceding paragraph of any or all of said security or any interest therein or other property on credit or for future delivery, such security or such interest therein or such other property shall be retained by the payee until the sale price therefor be paid by the purchaser, but the payee shall incur no liability in case of failure by the purchaser to take up and pay for such security or such interest or such other property so sold. In case of any such failure the payee shall have the same right to dispose of said security and interest therein and such other property as are given in the last preceding paragraph to the same effect as though no sale had theretofore been made.

The Company further agrees that, upon any transfer of

this note, the payee may deliver the securities or property held as security, or any part thereof, or interest therein, to the transferee, who shall thereupon become vested with all the powers and rights above given to the payee in respect thereto for the purpose of securing and enforcing the payment to the holder of the whole or any part of the indebtedness evidenced by this note. And the payee shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter to the Company or to its successors or assigns.

The term "payee" as used herein shall include

and/or any successor or assign or liquidator or transferee of this note.

In Witness Whereof, the Company has caused this note to be executed and its corporate seal to be hereunto affixed by its duly authorized officer or officers this day of , 1932.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,

By .....

Attest:

.....

IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

In the Matter of The Chicago, Rock Island and Pacific Railway Company, Debtor.	No. 53209. In proceedings for the Reorganization of a Railroad.

NOTICE.

To.....

.....

Please take notice that on Tuesday, September 26, 1933, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, we shall present to his Honor Judge Wilkerson, in the court room usually occupied by him in the City of Chicago, the petition of the Debtor, The Chicago, Rock Island and Pacific Railway Company, respecting the payment

of interest on its collateral loans; which petition will be substantially in the form of the enclosed copy; at which time and place you may appear if you see fit.

MARCUS L. BELL,
25 Broad Street,
New York,
W. F. DICKINSON,
W. F. PETER,
1023 LaSalle Street Station,
Chicago, Ill.,
Attorneys for The Chicago, Rock Island and Pacific Railway Company, Debtor.

AFFIDAVIT.

State of New York, }
County of New York, } ss.:

MARCUS L. BELL, being duly sworn, states that on September 15, 1933, he sent a copy of the foregoing notice, together with a copy of the petition referred to therein, which was substantially in the form of the petition hereto attached, by registered United States mail, to the following:

1. Bankers Trust Company and B. W. Jones, of New York, Trustees of the General Gold Bond Mortgage of The Chicago, Rock Island and Pacific Railway Company.
2. Central Hanover Bank and Trust Company, of New York, and George S. Hovey, of Kansas City, Missouri, Trustees of the First and Refunding Gold Bond Mortgage of The Chicago, Rock Island and Pacific Railway Company.
3. The National City Bank of New York, Trustee of the Indenture securing the Secured 4½% Gold Bonds, Series A due September 1, 1952, of The Chicago, Rock Island and Pacific Railway Company.
4. The Chase National Bank of the City of New York, Trustee of the Indenture securing the Thirty-Year 4½% Convertible Gold Bonds of The Chicago, Rock Island and Pacific Railway Company.
5. Central Hanover Bank and Trust Company, of New York, Trustee of the Consolidated First Mortgage of Burlington, Cedar Rapids and Northern Railway Company.
6. Girard Trust Company, of Philadelphia, Trustee of the

First Mortgage of Choctaw and Memphis Railroad Company.

7. Girard Trust Company, of Philadelphia, Trustee of the Consolidated First Mortgage of Choctaw, Oklahoma and Gulf Railroad Company.

8. Bankers Trust Company, of New York, Trustee of the First Mortgage of Rock Island, Arkansas and Louisiana Railroad Company.

9. Missouri Pacific Railroad Company, St. Louis, Missouri, Assignee of Little Rock and Hot Springs Western Railroad Company, Payee of Rock Island, Arkansas and Louisiana Railroad Company's Little Rock and Hot Springs Western Notes.

10. Bankers Trust Company, of New York, Trustee of the First Mortgage of St. Paul and Kansas City Short Line Railroad Company.

11. Guaranty Trust Company, of New York, Trustee of The Chicago, Rock Island and Pacific Railway Company Equipment Trust Agreement, Series I.

12. The New York Trust Company, of New York, Trustee of The Chicago, Rock Island and Pacific Railway Equipment Trust (Issue of 1923), Series L.

13. Marine Midland Trust Company of New York, Trustee of The Chicago, Rock Island and Pacific Railway Equipment Trust (Issue of 1924), Series M.

14. The Chase National Bank of the City of New York, Trustee of The Chicago, Rock Island and Pacific Railway Equipment Trust (Issue of 1925), Series N.

15. The Chase National Bank of the City of New York, Trustee of The Chicago, Rock Island and Pacific Railway Equipment Trust (Issue of 1927), Series O.

16. The Chase National Bank of the City of New York, Trustee of The Chicago, Rock Island and Pacific Railway Equipment Trust (Issue of 1929), Series P.

17. The Chase National Bank of the City of New York, Trustee of The Chicago, Rock Island and Pacific Railway Equipment Trust (Issue of 1930), Series Q.

18. Messrs. Alexander & Green, Counsel for Protective Committee of the General Mortgage 4% Gold Bonds.

19. Messrs. Root, Clark, Buckner & Ballantine, Counsel for Protective Committee of the First and Refunding 4% Gold Bonds and the Secured 4½% Gold Bonds, Series A.

20. Messrs. White & Case, Counsel for Protective Committee of the St. Paul and Kansas City Short Line 4½% Gold

Bonds and the Rock Island, Arkansas and Louisiana 4½% Gold Bonds.

21. Messrs. Hornblower, Miller, Miller & Boston, Counsel for Protective Committee of the Burlington, Cedar Rapids and Northern Consolidated 5% Gold Bonds.

22. Messrs. Cadwalader, Wickersham & Taft, Counsel for Protective Committee of the Thirty-Year Convertible 4½% Gold Bonds.

23. Reconstruction Finance Corporation, Washington, D. C.

24. The Chase National Bank of the City of New York, New York City, New York.

25. Continental Illinois Bank and Trust Company, Chicago, Ill.

26. The New York Trust Company, New York City, New York.

27. Harris Trust and Savings Bank, Chicago, Ill.

28. Mississippi Valley Trust Company, St. Louis, Mo.

And further affiant saith not.

Marcus L. Bell.

Subscribed and sworn to before me this 15th day of September, 1933.

Barbara Stoiber
Notary Public, New York County
County Clerk's No. 404, Reg. No. 4-S-47
Term expires March 30, 1934

(Seal)

Filed _____

_____
Clerk.

And on, to wit, the 26th day of September, 1933, came the Protective Committee for the General Mortgage 4% Bonds of 1988 by its attorneys and filed in the Clerk's office of said Court a certain answer to the petition of the Debtor for instructions of the Court with respect to the payment of interest on its collateral loans, in words and figures following, to wit:

* * (Caption) * *

ANSWER OF THE PROTECTIVE COMMITTEE FOR THE GENERAL MORTGAGE 4% BONDS OF 1988 TO THE PETITION OF THE DEBTOR FOR INSTRUCTIONS OF THE COURT WITH RESPECT TO THE PAYMENT OF INTEREST ON ITS COLLATERAL LOANS.

Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse are a Protective Committee with respect to the General Mortgage 4% Bonds of 1988 of the Debtor, duly organized and acting pursuant to a Deposit Agreement dated as of the 7th day of July, 1933. Each member of the Protective Committee is a responsible officer of a life insurance corporation or a savings bank which has a substantial sum invested in the said General Mortgage bonds. More than 250 holders of said bonds have deposited their bonds with the Depositary designated in said Deposit Agreement, and every day the Depositary receives additional substantial sums which are deposited pursuant to said Deposit Agreement. The aggregate of the bonds so deposited is more than $13,000,000. Said Deposit Agreement provides that the Committee may oppose the granting of any orders which may be applied for before the Court, and may do any and all acts which the Committee may deem proper for the protection of the bondholders.

Said Committee, therefore, now comes and says,—

First. The Court should not direct or authorize the payment of interest on the collateral loans of the Debtor until the earnings of the Debtor pledged to secure the General Mortgage have been properly segregated and allocated to the payment of interest and principal of the General Mortgage, and until there are free funds in the estate available for the payment of interest on such collateral loans.

(1) The authorized issue of the General Mortgage is $100,000,000, of which bonds of the face value of $61,581,000 are now outstanding in the hands of the public, and bonds of a face amount of $38,400,000 are said to be pledged as collateral security for the Debtor's First and Refunding Mortgage dated April 1, 1904. Said bonds bear interest at the rate of 4% payable semi-annually, and mature January 1, 1988. A semi-annual instalment of interest became due on said General Mortgage bonds on July 1, 1933, but the Debtor

did not pay or cause to be paid said instalment of interest or any part thereof and defaulted in that behalf.

The payment when due of the principal and interest on the General Mortgage bonds is secured by a Mortgage dated January 1, 1898, which conveys to the Trustees thereunder more than 3000 miles of railroad upon which the General Mortgage is a first lien, and also conveys to the Trustees other and after-acquired equipment and property. The lines of railroad upon which the General Mortgage is a first lien are principally main lines, on which the traffic is heaviest and which are among the most valuable lines of the Debtor.

By the terms of the General Mortgage the Debtor pledged to the Trustees of the General Mortgage all tolls, incomes, rents, issues and profits of the mortgaged lines.

The Mortgage also contains a provision authorizing the Trustees, in the event of a default for six months in the payment of interest, to take possession of the mortgaged property, operate it, collect all tolls, incomes, earnings, rents, issues and profits of the same, and, after paying all expenses, to apply the net earnings as follows: (p. 49, 50)

"In case the principal of the bonds hereby secured shall not have become due, to the payment of the interest in default, in the order of the maturity of the installments of such interest, with interest thereon at the same rate of interest as was borne by the bond on which such interest shall be in default; such payments to be made ratably to the persons entitled thereto, without discrimination or preference.

"In case the principal of the bonds hereby secured shall have become due, by declaration or otherwise, first to the payment of accrued interest (with interest on the overdue installments thereof at the same rate of interest as was borne by the bond on which such interest shall be in default) in the order of the maturity of the installments, and then to the payment of the principal of all bonds hereby secured; in every instance such payments to be made ratably to the persons entitled to such payment, without any discrimination or preference.

"Upon the payment in full of whatever may be due for principal and interest of said bonds, or be payable for other purposes, the premises shall be returned to the Railway Company."

The Mortgage also authorizes the Trustees to declare the principal sum due in the event of default for six months in the payment of interest.

None of the bonds held as collateral by the Reconstruction

Finance Corporation or the banks are General Mortgage bonds, or are senior in lien to the General Mortgage bonds.

(2) The Debtor has taken the initiative in suggesting a formula for the segregation of the earnings of the Debtor among the various mortgages on the Debtor's property. A proposed formula has been prepared by the Vice-President and General Auditor of the Debtor and submitted to this Committee and to the other Committees representing bondholders of the Debtor. Said Committees and the Debtor are endeavoring to agree, if possible, on such a formula, but in the opinion of this Committee it is certain to take some time before a formula can be agreed upon by all the interested parties.

The formula proposed by the Debtor indicates that the proportion of the earnings of the Debtor not pledged to secure any of the mortgages is very small, and that almost all of the funds which are now in or hereafter may come into the hands of the Debtor from the earnings of the Debtor's lines of railroad are pledged to secure the various mortgages.

(3) This Committee has not yet filed a petition for leave to intervene in this proceeding. It intends to do so at a later date.

This Committee represents to the Court that no order should be made authorizing the Debtor to use funds of the estate to pay interest on the Debtor's collateral loans until it shall have been established that the funds so to be used are free funds, not pledged to secure the General Mortgage or any other mortgage.

Second. It is not in the interest of the Debtor's estate, or of the creditors or security holders of the Debtor, that the funds in the hands of the Debtor should be used to pay interest on the collateral loans.

(1) The notes held by the Reconstruction Finance Corporation and the banks become due on March 1, 1934. There is no reasonable probability that a plan of reorganization can be presented, confirmed and consummated in this proceeding prior to March 1, 1934. The payment of interest prior to March 1, 1934, is futile if the intent be to avert a practically inevitable default on the Debtor's collateral loans.

(2) Unless the interest on the General Mortgage bonds is paid on or before January 1, 1934, the Trustees of the General Mortgage will be in a position to declare the principal amount due. As stated above, there are $99,981,000 of the General Mortgage bonds, including the bonds said to be pledged to secure the First and Refunding Mortgage. The

interest is at a low rate, 4%. The bonds do not mature until January 1, 1988. If the bonds are declared to be due and payable as a result of the non-payment of interest on or before January 1, 1934, the bondholders will be entitled in any reorganization plan either to be paid off or to have provision made for them as provided in clause 6, subdivision (g), of Section 77 of the Bankruptcy Act, unless a two-thirds majority should accept a plan otherwise providing. If the bonds are not declared due, a plan of reorganization might be presented and confirmed which would leave the General Mortgage bonds undisturbed, bearing interest at 4% and not maturing until January 1, 1988.

(3) In the petition for Order No. 4, filed on June 26, 1933, the Debtor stated in substance that it expected to be able to pay the interest of the General Mortgage bonds "long prior" to January 1, 1934. In the petition for Order No. 11, filed August 28, 1933, the Debtor said that it then expected to "be in a position to pay the said interest not later than November 1, 1933." In each instance, as this Committee is informed and verily believes, the Debtor referred to the payment of interest amounting to $1,231,620 on the General Mortgage bonds in the hands of the public of the principal sum of $61,581,000.

This Committee is informed that the Trustees of the First and Refunding Mortgage bonds claim or will claim that if interest is to be paid on the General Mortgage bonds in the hands of the public it must also be paid on the $38,400,000 said to be pledged to secure the First and Refunding Mortgage. The semi-annual instalment of interest on that amount would be $768,000. This Committee is informed that the Debtor does not now expect to have sufficient funds by November 1, 1933, to pay $768,000 in addition to the said $1,231,620.

This Committee, therefore, represents to the Court that any action which would result in a diversion of funds otherwise available to pay the interest on the General Mortgage is prejudicial to the Debtor's estate and to all creditors and security holders of the Debtor.

Third. The prior Orders providing for payment of interest to the Reconstruction Finance Corporation and the banks are not conclusive as to the propriety of authorizing further payments to the Reconstruction Finance Corporation or the banks.

Order No. 4 was made on June 26, 1933, prior to the formation of this Committee for the protection of the Gen-

eral Mortgage bondholders and without notice to the Trustees of the said General Mortgage.

Order No. 6 was made on July 26, 1933, and was entered on said day. No notice of the application for said Order or opportunity to be heard was given to said Committee or, so far as the Committee is informed, to the Trustees, and they were not heard in respect thereto.

This Committee appeared in opposition to Order No. 11, which authorized the payment of interest to the Reconstruction Finance Corporation on September 1st, but its answer was filed "without prejudice to any right of the Committee or of the bondholders represented by the Committee to object to any further petitions or orders relating to subsequent proposed payments to the Reconstruction Finance Corporation or other creditors."

Wherefore, the holders of the General Mortgage bonds object to the payment of the interest falling due October 1st on the Reconstruction Finance Corporation loans, and object to the payment of interest on any other debt of the Debtor before the defaulted interest on the General Mortgage bonds is paid in full from the date of the default to the date of payment, as provided for in the General Mortgage, unless and until all the earnings of the Railway Company shall have been properly segregated and allocated to the various mortgages and it be found that there are free funds with which other payments may be made, and that such other payments are in the interest of the Debtor's estate and of the creditors as defined in subdivision (b) of Section 77 of the Bankruptcy Act.

LEON O. FISHER,
ROBERT DECHERT,
STACY B. LLOYD,
JAMES LEE LOOMIS,
ROBERT H. STENHOUSE,
Protective Committee,
By EDWARD W. BOURNE.

ALEXANDER & GREEN,
Attorneys for Protective Committee,
Office and P. O. Address,
No. 120 Broadway,
Borough of Manhattan,
City of New York, N. Y.

State, County and City of New York. } ss.

EDWARD W. BOURNE, being first duly sworn, deposes and says that he is the Secretary of the Protective Committee for the General Mortgage bonds of the Debtor and is authorized by said Committee to make this verification; that he has read the foregoing answer and knows the contents thereof, and that the facts stated and allegations made therein are true to his own knowledge, except as to those matters alleged upon information and belief, and as to those matters he believes it to be true.

EDWARD W. BOURNE.

Subscribed in my presence and sworn to before me this 22nd day of September, 1933.

R. Damm

(Seal) *Notary Public, Kings County N. Y. No.* 139
Certificate Filed New York County No. 358
Kings County Register's No. 4142
New York County Register's No. 4 D 200
Commission expires March 30, 1934

And on, to wit, the 26th day of September, 1933, came the Protective Committee for first and refunding mortgage 4% gold bonds due April 1, 1934 and received 4½% gold bonds, Series A, due September 1, 1952 of the Debtor by their attorneys and filed in the Clerk's office of said Court a certain Affidavit of Dwight S. Beebe in words and figures following, to wit:

* * (Caption) * *

AFFIDAVIT SUBMITTED ON BEHALF OF THE PROTECTIVE COMMITTEE FOR FIRST AND REFUNDING MORTGAGE 4% GOLD BONDS, DUE APRIL 1, 1934, AND SECURED 4½% GOLD BONDS, SERIES A, DUE SEPTEMBER 1, 1952, OF THE DEBTOR REGARDING PETITION OF THE DEBTOR RESPECTING THE PAYMENT OF INTEREST ON COLLATERAL LOANS AND FOR AN INJUNCTION AGAINST THE SALE OF THE COLLATERAL.

State of New York, }
County of New York, } ss.

DWIGHT S. BEEBE, being duly sworn, says:

1. I am Chairman of the Protective Committee for First and Refunding Mortgage 4% Gold Bonds, due April 1, 1934, and Secured 4½% Gold Bonds, Series A, due September 1, 1952, of the Debtor, which consists of the individuals hereinafter named acting under a Deposit Agreement, dated July 21, 1933 (hereinafter sometimes called the Committee).

2. This affidavit is submitted in support of the application of the Debtor for an injunction restraining Reconstruction Finance Corporation and the Banks therein mentioned from selling collateral held by them as security for indebtedness of the Debtor to the Reconstruction Finance Corporation and such Banks. This affidavit briefly summarizes the position of the Committee regarding such application of the Debtor and supplies certain additional facts not contained in the application of the Debtor which the Committee believes may be relevant.

3. The Committee was formed at the request of holders of large amounts of such Bonds and its members, listed below, are associated with the respective institutions set forth opposite their names:

Dwight S. Beebe, Chairman—Vice-President and Financial Manager of The Mutual Life Insurance Company of New York.

Merrel P. Callaway—Vice-President of Guaranty Trust Company of New York.

Harry C. Hagerty—Assistant Treasurer of Metropolitan Life Insurance Company of New York.

DeWitt Millhauser—Member of the firm of Speyer & Co.
John W. Stedman—Vice-President in charge of Investments of The Prudential Insurance Company of America.
Harold Stone—President of Onondaga County Savings Bank and representative of the National Association of Mutual Savings Banks.
Frederick W. Walker—Vice-President of The Northwestern Mutual Life Insurance Company.

Up to the close of business on September 21, 1933, the holders of $25,572,000 principal amount of First and Refunding Mortgage 4% Gold Bonds of the Debtor and the holders of $9,138,500 principal amount of Secured 4½% Gold Bonds, Series A, of the Debtor had deposited such principal amount of Bonds under the aforesaid Deposit Agreement with this Committee and such Bonds have since remained on deposit with this Committee. Additional bonds of both issues are in the hands of the respective Depositaries for the Committee for the purpose of deposit with the Committee. I believe that large additional amounts of Bonds of both issues will, from time to time, be deposited with the Committee.

There are outstanding in the hands of the public $104,470,000 face amount of such First and Refunding Mortgage 4% Gold Bonds and $40,000,000 face amount of such Secured 4½% Gold Bonds.

4. I am informed and believe,

(a) that there are pledged with the Trustees under the First and Refunding Gold Bond Mortgage of the Debtor approximately $66,495,000 face amount of Bonds of the Debtor's System, and approximately $30,244,050 face amount of the capital stock of the Debtor's System, making a total of $96,739,050 face amount of capital liabilities of such System;

(b) that there are pledged with the Trustee under the Secured 4½% Gold Bond Indenture of the Debtor $45,000,000 face amount of First and Refunding Mortgage Bonds of the Debtor;

(c) that there are pledged with the Trustees under the General Gold Bond Mortgage of the Debtor $1,365,000 face amount of bonds of the Debtor's System and $2,645,000 face amount of capital stock of the Debtor's System; and

(d) that the grand total of such pledged collateral therefore amounts to $145,749,050 face amount of capital obligations of the Debtor's System.

5. I am informed and believe that, in certain events de-

scribed in the Indentures under which the aforesaid Trustees are acting, such Trustees are given the right to sell such collateral. On behalf of the Committee, I request permission to submit to the Court upon the hearing of the Debtor's application copies of any one or more of such Indentures.

6. I am informed and believe that following the entry herein, on June 7, 1933, of the original order entered herein, containing a general injunction against disturbing the property of the Debtor, the Debtor caused copies thereof to be delivered to the Reconstruction Finance Corporation and to each of the five Banks mentioned in the Debtor's application.

7. The Debtor has made previous applications to pay interest on the indebtedness owing to the Reconstruction Finance Corporation and the Banks, namely, the interest due August 1, 1933 and September 1, 1933. This Committee did not appear to oppose such payments, upon the stipulation of counsel for the Debtor that failure of the Committee so to do was not to be deemed a consent to, or approval of, such payments and was without prejudice to the right of the Committee to appear and oppose similar payments in the future.

8. On behalf of the Committee, I wish to point out that a decision holding that the Reconstruction Finance Corporation and the Banks should not be enjoined from selling the $54,710,000 face amount of collateral held by them would also determine that the Trustees of the three Bond issues mentioned above had the right to sell, in accordance with the terms of the above-mentioned Indentures, the $145,749,050 total face amount of capital obligations of the System pledged with them.

9. The position of this Committee, which will be more fully set forth at the hearing of the Debtor's application, is that the interests of the bondholders it represents and of the Debtor's estate generally would best be served, and the policy underlying the new amendment to the Bankruptcy Act would best be carried out, by a decision requiring all holders of secured claims to retain their collateral until a plan of reorganization is prepared, approved and put into effect. The Committee believes that, in any event, the right of holders of collateral should be definitely determined in order (a) that the Trustees under the three Bond issues mentioned, as well as the Reconstruction Finance Corporation and the Banks, may know whether they will be entitled to sell their collateral, (b) that any reorganization plan may be intelligently prepared, and (c) that the Debtor's policy regarding pay-

ment of interest on the various classes of its secured obligations may be properly determined.

The contentions of the Committee are (1) that in a proceeding under the new Section 77 of the Bankruptcy Act the Court has power to enjoin pledgees from selling collateral where it is essential in order to carry out the purpose of the proceeding, and (2) that it is essential to enjoin such sales in a case such as this where the collateral consists of obligations of the Debtor System in principal amount vastly exceeding the indebtedness.

10. The Committee therefore asks leave to file this affidavit and to be heard upon said application of the Debtor.

DWIGHT S. BEEBE.

Sworn to before me this 25th day of September, 1933.

Joseph A. Howard, Jr.,
(Seal) *Notary Public, Queens County.*
Queens Co. Clk's No. 869, Reg. No. 746.
N. Y. Co. Clk's No. 378, Reg. No. 4 H 201.
Kings Co. Clk's No. 167, Reg. No. 4154.
Commission Expires March 30, 1934.

And on, to wit, the 26th day of September, 1933, came The Chase National Bank of the City of New York by its attorneys and filed in the Clerk's office of said Court a certain Special Appearance in words and figures following, to wit:

* * (Caption) * *

SPECIAL APPEARANCE OF THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK.

The Chase National Bank of the City of New York, by Rushmore, Bisbee & Stern, its attorneys, hereby enters its appearance herein in the matter of the petition of the debtor, The Chicago, Rock Island and Pacific Railway Company, respecting the payment of interest on its collateral loans, specially and solely for the purpose of contesting and objecting to the jurisdiction of the Court over the person of said The Chase National Bank of the City of New York.

RUSHMORE, BISBEE AND STERN
Attorneys Appearing Specially for The Chase National Bank of the City of New York,
Office & P. O. Address
20 Pine Street
Borough of Manhattan
City of New York

And on, to wit, the 26th day of September, 1933, came The Chase National Bank of the City of New York by its attorneys and filed in the Clerk's office of said Court a certain affidavit of William H. Moorhead in support of its special appearance in words and figures following, to wit:

* * (Caption) * *

AFFIDAVIT OF WILLIAM H. MOORHEAD, VICE PRESIDENT OF THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, IN SUPPORT OF THE SPECIAL APPEARANCE OF SAID BANK IN THE MATTER OF THE PETITION OF THE DEBTOR RESPECTING THE PAYMENT OF INTEREST ON ITS COLLATERAL BONDS.

State of New York }
County of New York } ss.:

WILLIAM H. MOORHEAD, being first duly sworn, deposes and says:

1. That he is an officer of The Chase National Bank of the City of New York, to wit, a Vice-President thereof; that The Chase National Bank of the City of New York (hereinafter referred to as the "Chase Bank"), is a national banking association organized and existing under the laws of the United States of America, and having its principal office and place of business at Pine Street, corner of Nassau Street, Borough of Manhattan, City, County and State of New York, and is a citizen of said State and a resident and inhabitant of the Southern District of New York; that the Chase Bank is not a party to this proceedings and has never been served with process herein.

2. That he has seen a copy of the petition of the debtor, The Chicago, Rock Island and Pacific Railway Company, respecting the payment of interest on its collateral loans, and is generally familiar therewith; that a copy of said petition was received at the main office of the Chase Bank in the City of New York by registered mail sometime during the morning of September 16, 1933; that attached to said copy of petition was a notice purporting to be from the attorneys for the debtor, to the effect that on Tuesday, September 26, 1933,

at 10:00 o'clock in the forenoon, or as soon thereafter as counsel could be heard, said attorneys would present a petition, substantially in the form of the attached copy, to his Honor Judge Wilkerson in the courtroom usually occupied by said judge in Chicago; that said copy of petition and notice arrived at the principal office of the Chase Bank as aforesaid in an envelope which bore post marks indicating that said envelope was deposited in the United States mails on September 15, 1933, in New York City, New York; that except as above set forth, the Chase Bank has received no notice of the said petition and the proposed hearing thereon.

3. That this affidavit is made in connection with and in support of the appearance of the Chase Bank herein specially and solely for the purpose of contesting and objecting to the jurisdiction of the Court over the person of said Bank.

WILLIAM H. MOORHEAD

Sworn to before me this 23rd day of September, 1933.

Thos. J. Flanagan

(Seal) *Notary Public, Kings Co.*

Kings Co. Clks. No. 116, Reg. No. 4112.
Certificates filed in New York County.
N. Y. Co. Clks. No. 264, Reg. No. 4F140.
Commission expires March 30, 1934.

And on, to wit, the 26th day of September, 1933, came the Continental Illinois National Bank and Trust Company of Chicago by its attorneys and filed in the Clerk's office of said Court a certain Limited and Special Appearance in words and figures following, to wit:

* * (Caption) * *

LIMITED AND SPECIAL APPEARANCE OF CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO.

We hereby enter the limited and special appearance of Continental Illinois National Bank and Trust Company of Chicago, a national banking association, served with notice of intent to file Petition for Order No. 15 heretofore filed by said Debtor in the above entitled cause, for the sole and only purpose of denying and objecting to the jurisdiction of this court to enter any injunction or restraining order against

said Continental Illinois National Bank and Trust Company of Chicago upon or under said Petition for Order No. 15, for the reasons that this court has (1) no jurisdiction over the person of said Continental Illinois National Bank and Trust Company of Chicago, (2) no jurisdiction over, or possession of, the property, the sale of which is sought to be restrained or enjoined under the terms of said Petition for Order No. 15, and (3) no jurisdiction to grant in this summary proceeding the injunction or restraining order prayed for in, or referred to in the prayer of, said Petition for Order No. 15.

MAYER, MEYER, AUSTRIAN & PLATT
Attorneys for said Continental Illinois National Bank and Trust Company of Chicago.

And on, to wit, the 26th day of September, 1933, came the Harris Trust and Savings Bank by its attorneys and filed in the Clerk's office of said Court a certain Special Appearance in words and figures following, to wit:

* * (Caption) * *

SPECIAL APPEARANCE.

We hereby enter the limited and special appearance of Harris Trust and Savings Bank, served with notice of intent to file petition for order No. 15 heretofore filed by said debtor in the above entitled cause, for the sole and only purpose of denying and objecting to the jurisdiction of this Court to enter any injunction or restraining order against the said Harris Trust and Savings Bank upon or under said petition for order No. 15 for the reasons:

1. That this Court has no jurisdiction over the person of said Harris Trust and Savings Bank, no process having been served upon it;

2. That, as appears in said petition for order No. 15, the collateral securities, the sale of which by Harris Trust and Savings Bank is sought to be enjoined under the terms of said petition, were at the time of the filing of the original petition of the debtor in the above entitled cause and still are in the possession of said Harris Trust and Savings Bank, and that this Court did not then and does not now have pos-

session thereof, and that this Court has no jurisdiction over such property.

3. That this Court has no jurisdiction to grant in this summary proceeding the injunction or restraining order prayed for in or referred to in the prayer of said petition.

CHAPMAN AND CUTLER
PERRY M. CHADWICK
Solicitors for said Harris Trust and Savings Bank.

PMC:N

And on, to wit, the 26th day of September, 1933, came The Mississippi Valley Trust Company by its attorney and filed in the Clerk's office of said Court a certain Special Appearance in words and figures following, to wit:

* * (Caption) * *

SPECIAL APPEARANCE OF MISSISSIPPI VALLEY TRUST COMPANY.

The Mississippi Valley Trust Company, by Milton R. Stahl, its attorney, hereby enters its appearance herein in the matter of the petition of the debtor, The Chicago, Rock Island and Pacific Railway Company, respecting the payment of interest on its collateral loans, specially and solely for the purpose of contesting and objecting to the jurisdiction of the Court over the person of said Mississippi Valley Trust Company.

MILTON R. STAHL,
Attorney Appearing Specially for Mississippi Valley Trust Company.
Office & P. O. Address:
Mississippi Valley Trust Building,
506 Olive St., St. Louis, Missouri.

And on, to wit, the 26th day of September, 1933, came The New York Trust Company by its attorneys and filed in the Clerk's office of said Court a certain Special and Limited Appearance in words and figures following, to wit:

* * (Caption) * *

SPECIAL AND LIMITED APPEARANCE OF THE NEW YORK TRUST COMPANY, A CORPORATION.

Comes now, The New York Trust Company, a corporation organized and existing under and by virtue of the laws of the State of New York, and having its principal office and place of business in the City, County and State of New York, by Sims, Stransky & Brewer, its attorneys, and enters its appearance herein for the sole purpose of contesting and objecting to the jurisdiction of this Court over its person, and for no other purpose whatsoever.

SIMS, STRANSKY & BREWER
Attorneys for The New York Trust Company.

Dated September 26, 1933.

And on, to wit, the 26th day of September, 1933, came The New York Trust Company by its attorneys and filed in the Clerk's office of said Court a certain affidavit of James P. Carey, Jr. agent, in support of its Special Appearance in words and figures following, to wit:

* * (Caption) * *

AFFIDAVIT OF JAMES P. CAREY JR., AGENT FOR THE NEW YORK TRUST COMPANY, IN SUPPORT OF THE SPECIAL APPEARANCE OF SAID TRUST COMPANY IN THE MATTER OF THE PETITION OF THE DEBTOR RESPECTING THE PAYMENT OF INTEREST ON ITS COLLATERAL LOANS.

State of Illinois } ss.
County of Cook }

JAMES P. CAREY JR., being first duly sworn, on oath deposes and says:

1. That he is the duly authorized agent of The New York Trust Company and is empowered to make this affidavit in its behalf; that The New York Trust Company, (hereinafter referred to as the "Trust Company"), is a corporation organ-

ized and existing under and by virtue of the laws of the State of New York and is and has been for many years engaged in the general banking and trust business, having its principal office and place of business at 100 Broadway, Borough of Manhattan, City, County and State of New York, and is a citizen of said State and a resident and inhabitant of the Southern District of New York; that it has no office or place of business within this district; that the said Trust Company is not a party to this proceeding, and has never been served with process herein.

2. Affiant further states that he has seen a copy of the petition of the debtor, The Chicago, Rock Island and Pacific Railway Company, described as Petition for Order No. 15, respecting the payment of interest on its collateral loans, and is generally familiar with the contents of said petition; that a copy of said petition was received at the main office of the said Trust Company in the City of New York, by registered mail on or about the 16th day of September, 1933; that attached to said copy of said petition was a notice purporting to be from the attorneys for the debtor, to the effect that on Tuesday, September 26, 1933, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel could be heard, said atorneys would present a petition, substantially in the form attached to said notice, to the Honorable James H. Wilkerson, District Judge, in the court room usually occupied by said judge in Chicago; that except as above set forth, the said Trust Company has received no notice of the said petition and the proposed hearing thereon.

3. That this affidavit is made in connection with and in support of the appearance of the said Trust Company herein specially and solely for the purpose of contesting and objecting to the jurisdiction of this Court over the person of said Company and for no other purpose.

JAMES P. CAREY JR.

Subscribed and sworn to before me this 26th day of September, 1933.

D. J. WARD
Notary Public.

(Seal)

And on, to wit, the 26th day of September, 1933, came the Reconstruction Finance Corporation by its attorneys and filed in the Clerk's office of said Court a certain Special Appearance in words and figures following, to wit:

* * (Caption) * *

SPECIAL APPEARANCE.

We hereby enter the limited and special appearance of Reconstruction Finance Corporation, a corporation, in the matter of the Petition of the Debtor for Order No. 15 in the above entitled cause, notice of the debtor's intent to present said Petition having been given to the Reconstruction Finance Corporation by registered mail at its principal office in Washington, D. C., such limited and special appearance being for the sole and only purpose of denying and objecting to the jurisdiction of this Court to enter any injunction or restraining order against said Reconstruction Finance Corporation upon or under said Petition for Order No. 15, for the reasons that this Court has (1) no jurisdiction over the person of said Reconstruction Finance Corporation, (2) no jurisdiction over, or possession of, the property the sale of which is sought to be restrained or enjoined under the terms of said Petition for Order No. 15, and (3) no jurisdiction to grant in this summary proceeding the injunction or restraining order prayed for in, or referred to in the prayer of, said petition.

C. M. CLAY
HOPKINS, STARR & GODMAN
Attorneys for said Reconstruction Finance Corporation.

And afterwards, to wit, on the 26th day of September, 1933, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge appears the following entry, to wit:

Order No. 15.

* * (Caption) * *

ORDER AUTHORIZING THE PAYMENT OF INTEREST DUE SEPTEMBER 30, 1933, ON LOAN OF RECONSTRUCTION FINANCE CORPORATION.

On this day coming on to be heard the Petition of the Debtor, The Chicago, Rock Island and Pacific Railway Company, respecting the payment of interest on its collateral

loans, and the Debtor appearing by Marcus L. Bell, W. F. Dickinson and W. F. Peter, its Solicitors, and the following also appearing:

Edward W. Bourne, Esq., of Alexander & Green, Counsel for Protective Committee of General Mortgage 4% Gold Bonds of the Debtor,

Elihu Root, Jr., Esq., of Root, Clark, Buckner & Ballantine, Counsel for Protective Committee of Debtor's First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds,

Edward C. Bailly, Esq., of Hornblower, Miller, Miller & Boston, Counsel for Protective Committee of Burlington, Cedar Rapids & Northern Consolidated 5% Gold Bonds,

A. N. Heusten, Esq., of White & Case, Counsel for Protective Committee of St. Paul & Kansas City Short Line 4½% Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds;

William Lloyd Kitchell, Esq., of Cadwalader, Wickershaw & Taft, Counsel for Protective Committee for 30-Year 4½% Convertible Gold Bonds;

also the following appearing specially:

C. M. Clay, John L. Hopkins and Charles O. Parker, Counsel for Reconstruction Finance Corporation,

Paul Miller, Esq., of Rushmore, Bizbee & Stern, Counsel for Chase National Bank of New York,

Edward W. Sims and James P. Carey, Jr., of Sims, Stransky, Brewer & Poust, Counsel for New York Trust Company,

Milton R. Stahl, Esq., of St. Louis, Missouri, Counsel for Mississippi Valley Trust Company of St. Louis,

Herbert A. Friedlich, of Mayer, Meyer, Austrian & Platt, Counsel for Continental Illinois National Bank and Trust Company of Chicago,

P. M. Chadwick, Esq., of Chapman & Cutler, Counsel for Harris Trust & Savings Bank of Chicago;

and the Court having heard the arguments of Counsel and the objections made on behalf of the General Mortgage Bondholders' Committee, and the Burlington, Cedar Rapids & Northern Bondholders' Committee to the payment of any further interest on the Reconstruction Finance Corporation loan; and the Reconstruction Finance Corporation and the various Banks by their respective counsel having agreed in open Court that, pending the determination of the matters and

things submitted in said petition, they would not undertake to convert, sell or dispose of the collateral pledged under their various notes, respectively, except upon five (5) days' notice to the Debtor corporation, if the interest due September 30, 1933, on the said Reconstruction Finance Corporation loan should be paid; and the Court being fully advised in the premises, it is

Ordered:

That the Debtor be and it hereby is authorized to pay, from funds in its hands, the interest due September 30, 1933, amounting to approximately $76,313.34, on the note of April 1, 1933, to Reconstruction Finance Corporation, referred to in said petition.

The other matters and things presented by said petition are reserved for further determination of this Court.

Entered:

JAMES H. WILKERSON
Judge.

Dated September 26, 1933.

And on, to wit, the 26th day of September, 1933, came the Protective Committees for Holders of Bonds of The Chicago, Rock Island and Pacific Railway Company System by their attorneys and filed in the Clerk's office of said Court a certain Petition for the appointment of trustees in words and figures following, to wit:

* * (Caption) * *

PETITION OF PROTECTIVE COMMITTEES FOR HOLDERS OF BONDS OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY SYSTEM FOR THE APPOINTMENT OF TRUSTEES.

To the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

The petition of the following five Committees, viz.: Committees for the protection of the holders of

(1) General Mortgage 4% Gold Bonds, due January 1, 1988, of the Debtor;

(2) First and Refunding Mortgage 4% Gold Bonds, due April 1, 1934, and Secured 4½% Gold Bonds, Series A, due September 1, 1952, of the Debtor;

(3) 30-Year 4½% Convertible Gold Bonds, due May 1, 1960, of the Debtor;

(4) Consolidated First Mortgage 5% Bonds, due April 1, 1934, of Burlington, Cedar Rapids and Northern Railway Company;

(5) First Mortgage 4½% Bonds, due February 1, 1941, of St. Paul & Kansas City Short Line Railroad Company, and First Mortgage 4½% Bonds, due March 1, 1934, of Rock Island, Arkansas & Louisiana Railroad Company;

the members of all of which Committees will be hereinafter set forth, respectfully shows as follows:

First: This is a petition for an order appointing trustees of the estate of the Debtor pursuant to the provisions of Section 77 of the Bankruptcy Act, as amended, and the other applicable provisions of said Bankruptcy Act.

Second: The members of the respective Committees and their affiliations are as follows:

General Mortgage 4% Gold Bonds, due January 1, 1988

Leon O. Fisher, Chairman, Vice-President, The Equitable Life Assurance Society of the United States, 393 Seventh Avenue, New York City.

Robert Dechert, Counsel, Penn Mutual Life Insurance Co., Independence Sq., Philadelphia, Pa.

Stacy B. Lloyd, Vice-President, Philadelphia Saving Fund Society, 700 Walnut St., Philadelphia, Pa.

James Lee Loomis, President, Connecticut Mutual Life Insurance Co., 140 Garden St., Hartford, Conn.

Robert H. Stenhouse, Treasurer, Bowery Savings Bank, 110 East 42nd Street, New York City.

First and Refunding Mortgage 4% Gold Bonds, due April 1, 1934, and Secured 4½% Gold Bonds, Series A, due September 1, 1952.

Dwight S. Beebe, Chairman, Vice-President and Financial Manager, The Mutual Life Insurance Company of New York.

Merrel P. Callaway, Vice-President, Guaranty Trust Company of New York.

Harry G. Hagerty, Assistant Treasurer, Metropolitan Life Insurance Company of New York.

DeWitt Millhauser, Speyer & Co.

John W. Stedman, Vice-President in charge of Investments, The Prudential Insurance Company of America.

Harold Stone, President, Onondaga County Savings Bank; representing National Association of Mutual Savings Banks.

Frederick W. Walker, Vice-President, The Northwestern Mutual Life Insurance Company.

Thirty-Year 4½% Convertible Gold Bonds, due May 1, 1960.

Ralph Wolf, Chairman, Speyer & Co.

Pierpont V. Davis, Vice-President, The City Company of New York, Incorporated.

A. F. Lafrentz, President, American Surety Company of New York.

George N. Lindsay, New York, N. Y.

Steele Mitchell, Vice-President, Adams Express Company.

Burlington, Cedar Rapids and Northern Railway Company Consolidated First Mortgage 5% Bonds, due April 1, 1934.

Alfred H. Meyers, Chairman, Assistant Treasurer, New York Life Insurance Co., New York City.

Milo W. Wilder, Jr., Treasurer, The Mutual Benefit Life Insurance Co., Newark, N. J.

Sterling Pierson, General Solicitor, Equitable Life Assurance Society, New York City.

Fred P. Hayward, Second Vice-President and Treasurer, John Hancock Mutual Life Insurance Company, Boston, Mass.

Howard Greene, Northwestern Mutual Life Insurance Co., Milwaukee, Wisconsin.

Wm. J. Lum, Treasurer, Dime Savings Bank, Wallingford, Conn.

Edwin S. Hunt, Treasurer, Waterbury Savings Bank, Waterbury, Conn.

St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds, due February 1, 1941, and Rock Island, Arkansas & Louisiana Railroad Company First Mortgage 4½% Bonds, due March 1, 1934.

James G. Blaine, Chairman, President, Marine Midland Trust Co. of New York.

Frank M. Gordon, Vice-President, The First Union Trust & Savings Bank, Chicago, Ill.

William V. Griffin, Brady Security and Realty Corporation, New York City.

R. G. Page, Vice-President, Bankers Trust Co., New York City.

James R. Trowbridge, President, The Franklin Savings Bank in the City of New York.

Third: At the close of business on the dates specified below, there had been deposited with the respective Committees named below the following principal amounts of Bonds of the several issues, the total outstanding amounts of which are also shown below:

Committee for	Date	Principal Amount of Bonds Deposited with Committee.	Principal Amount of Total Outstanding Bonds of Same Issue (excluding pledged Bonds).
1. General Mortgage 4% Gold Bonds,	Sept. 20, 1933	$12,986,000	$ 61,581,000
2. First and Refunding Mortgage 4% Gold Bonds, and Secured 4½% Gold Bonds, Series A,	Sept. 21, 1933	$25,572,000 $ 9,138,500	$104,470,000 $ 40,000,000
3. Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds,	Sept. 20, 1933	$ 4,096,000	$ 11,000,000
4. St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds, and Rock Island, Arkansas & Louisiana Railroad Company First Mortgage 4½% Bonds,	Sept. 21, 1933 Sept. 21, 1933	$ 841,605 $ 694,500	$ 9,981,940 $ 11,000,000
Totals		$53,328,605	$238,032,940

Substantial additional amounts of Bonds of each issue are in the hands of the respective depositaries for such Committees for the purpose of deposit with such Committees.

The Committee for the Thirty-Year 4½% Convertible Gold Bonds of the Debtor, of which $32,228,000 are outstanding, has not yet called for deposits of bonds, but the individual members of such Committee represent institutions holding substantial amounts of bonds of that issue.

The said Committees represent all classes of creditors of the Rock Island system, that is, holders of first mortgage liens on the road and its equipment, or parts thereof, junior liens thereon, bonds secured by pledge of collateral and unsecured creditors.

Fourth: On June 7, 1933, the Debtor filed its petition with this Court, verified June 7, 1933, stating that it was without funds to pay and discharge its obligations as they matured and that it desired, therefore, to effect a plan of reorganization, pursuant to the provisions of Section 77, chapter 8, of the Acts of Congress relating to bankruptcy. On June 7, 1933, an order was made and entered by this Court approving the said petition as properly filed, and authorizing the

Debtor, pending further order of this Court, among other things, to run, manage, maintain, operate and keep in proper condition and repair, the railroads and property of the Debtor, wherever situated, and to manage and conduct its business, all according to law, and subject to such supervision and control by the Court, as the Court might exercise by further orders entered herein. Since that date, the Debtor has managed and operated its railroads and property, and no trustee of the Debtor's estate has been appointed in this proceeding.

Fifth: The management and operation of the Debtor's estate has been and is now in the hands of its Board of Directors, elected by the Debtor's stockholders, and in the hands of officers appointed by such Directors. It is the opinion of your petitioners that such Directors and officers necessarily have been and are primarily concerned with promoting the interests of stockholders of the Debtor, whose interest in the estate of the Debtor consists only of an equity subordinate to the claims of all creditors; and, accordingly, that they cannot deal with those matters which must constantly arise in the operation of the properties where the interests of the creditors conflict with the interests of the stockholders, without being prejudiced in favor of the interests of the stockholders. Such conflicts of interest exist in connection with those policies governing day to day operation of the railroad which are not submitted to the Court, and also exist in connection with recommendations to the Court regarding matters submitted to the Court for decision.

Sixth: Your petitioners deem it desirable and necessary for the protection of the bondholders whom they represent that the railroads and other property of the Debtor be operated and managed by trustees, at least one of whom shall have had no previous connection with the Debtor, and whose judgment would, therefore, not be affected by any previous interest.

Wherefore, your petitioners pray that this Court appoint trustees of the Debtor's estate, pursuant to the provisions of Section 77 of the Bankruptcy Act, as amended, and the other relevant provisions of said Act; and for such other and further relief in the premises as to this Honorable Court shall seem meet.

PROTECTIVE COMMITTEE FOR THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY GENERAL MORTGAGE 4% GOLD BONDS, DUE JANUARY 1, 1988,
By R. H. STENHOUSE,
Acting Chairman.

PROTECTIVE COMMITTEE FOR THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY FIRST AND REFUNDING MORTGAGE 4% GOLD BONDS, DUE APRIL 1, 1934 AND SECURED 4½% GOLD BONDS, SERIES A, DUE SEPTEMBER 1, 1952,
By DWIGHT S. BEEBE,
Chairman.

PROTECTIVE COMMITTEE FOR THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY THIRTY-YEAR 4½% CONVERTIBLE GOLD BONDS, DUE MAY 1, 1960,
By RALPH WOLF,
Chairman.

PROTECTIVE COMMITTEE FOR BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY CONSOLIDATED FIRST MORTGAGE FIVE PER CENT. BONDS DUE APRIL 1, 1934,
By ALFRED H. MEYERS,
Chairman.

PROTECTIVE COMMITTEE FOR ST. PAUL AND KANSAS CITY SHORT LINE RAILROAD COMPANY FIRST MORTGAGE 4½% GOLD BONDS, DUE FEBRUARY 1, 1941, AND ROCK ISLAND, ARKANSAS AND LOUISIANA RAILROAD COMPANY FIRST MORTGAGE 4½% GOLD BONDS, DUE MARCH 1, 1934,
By JAMES G. BLAINE,
Chairman.

ALEXANDER & GREEN,
Counsel for Protective Committee for General Mortgage Bonds,
120 Broadway,
New York, N. Y.

ROOT, CLARK, BUCKNER & BALLANTINE,
Counsel for Protective Committee for First and Refunding Bonds and Secured 4½% Gold Bonds,
31 Nassau Street,
New York, N. Y.

CADWALADER, WICKERSHAM & TAFT,
Counsel for Protective Committee for Convertible Gold Bonds,
14 Wall Street,
New York, N. Y.

HORNBLOWER, MILLER, MILLER & BOSTON,
Counsel for Protective Committee for Burlington, Cedar Rapids and Northern Bonds,
15 Broad Street,
New York, N. Y.

WHITE & CASE,
Counsel for Protective Committee for St. Paul and Kansas City Short Line Bonds and Rock Island, Arkansas and Louisiana Bonds,
14 Wall Street,
New York, N. Y.

State of New York }
County of New York } ss.:

ROBERT H. STENHOUSE, being duly sworn, says:

I am Acting Chairman of the Protective Committee for The Chicago, Rock Island and Pacific Railway Company General Mortgage 4% Gold Bonds, due January 1, 1988, one of the petitioners herein, and have read the foregoing petition. I know the contents thereof and the same is true to my own knowledge except as to matters therein stated to be alleged on information and belief and as to those matters I believe it to be true.

R. H. STENHOUSE.

Subscribed and sworn to before me this 22nd day of September, 1933.

Joseph A. Howard, Jr.,
(Notarial Seal) *Notary Public, Queens County.*
Queens Co. Clk's No. 869, Reg. No. 746
N. Y. Co. Clk's No. 378, Reg. No. 4H201
Kings Co. Clk's No. 167, Reg. No. 4154
Commission Expires March 30, 1934

State of New York
County of New York } ss.:

DWIGHT S. BEEBE, being duly sworn, says:

I am Chairman of the Protective Committee for The Chicago, Rock Island and Pacific Railway Company First and Refunding Mortgage 4% Gold Bonds, due April 1, 1934 and Secured 4½% Gold Bonds, Series A, due September 1, 1952, one of the petitioners herein, and have read the foregoing petition. I know the contents thereof and the same is true to my own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

DWIGHT S. BEEBE.

Subscribed and sworn to before me this 22nd day of September, 1933.

Joseph A. Howard, Jr.,
(Notarial Seal) *Notary Public, Queens County.*
Queens Co. Clk's No. 869, Reg. No. 746
N. Y. Co. Clk's No. 378, Reg. No. 4H201
Kings Co. Clk's No. 167, Reg. No. 4154
Commission Expires March 30, 1934

State of New York
County of New York } ss.:

RALPH WOLF, being duly sworn, says:

I am Chairman of the Protective Committee for The Chicago, Rock Island and Pacific Railway Company Thirty-Year 4½% Convertible Gold Bonds, due May 1, 1960, one of the petitioners herein, and have read the foregoing petition. I know the contents thereof and the same is true to my own knowledge except as to matters therein stated to be alleged on information and belief and as to those matters I believe it to be true.

RALPH WOLF.

Subscribed and sworn to before me this 22nd day of September, 1933.

Joseph A. Howard, Jr.,
(Notarial Seal) *Notary Public, Queens County.*
Queens Co. Clk's No. 869, Reg. No. 746
N. Y. Co. Clk's No. 378, Reg. No. 4H201
Kings Co. Clk's No. 167, Reg. No. 4154
Commission Expires March 30, 1934

State of New York }
County of New York } ss.:

ALFRED H. MEYERS, being duly sworn, says:

I am Chairman of the Protective Committee for Burlington, Cedar Rapids and Northern Railway Company Consolidated First Mortgage Five Per Cent. Bonds, due April 1, 1934, one of the petitioners herein, and have read the foregoing petition. I know the contents thereof and the same is true to my own knowledge except as to matters therein stated to be alleged on information and belief and as to those matters I believe it to be true.

ALFRED H. MEYERS.

Subscribed and sworn to before me this 22nd day of September, 1933.

Joseph A. Howard, Jr.,
(Notarial Seal) *Notary Public, Queens County.*
Queens Co. Clk's No. 869, Reg. No. 746
N. Y. Co. Clk's No. 378, Reg. No. 4H201
Kings Co. Clk's No. 167, Reg. No. 4154
Commission Expires March 30, 1934

State of New York }
County of New York } ss.:

JAMES G. BLAINE, being duly sworn, says:

I am Chairman of the Protective Committee for St. Paul and Kansas City Short Line Railroad Company First Mortgage 4½% Gold Bonds, due February 1, 1941, and Rock Island, Arkansas and Louisiana Railroad Company First Mortgage 4½% Gold Bonds, due March 1, 1934, one of the petitioners herein, and have read the foregoing petition. I know the contents thereof and the same is true to my own knowledge except as to matters therein stated to be alleged on information and belief and as to those matters I believe it to be true.

JAMES G. BLAINE.

Subscribed and sworn to before me this 22nd day of September, 1933.

Joseph A. Howard, Jr.,
(Notarial Seal) *Notary Public, Queens County.*
Queens Co. Clk's No. 869, Reg. No. 746
N. Y. Co. Clk's No. 378, Reg. No. 4H201
Kings Co. Clk's No. 167, Reg. No. 4154
Commission Expires March 30, 1934

And on, to wit, the 11th day of October, 1933, came The Chicago, Rock Island & Pacific Railway Company, Debtor, by its attorneys and filed in the Clerk's office of said Court a certain answer to petition of various bondholders committees for the appointment of trustees in words and figures following, to wit:

Answer to Petition for
Order No. 21.

Filed October 11, 1933.

* * (Caption) * *

ANSWER OF PRINCIPAL DEBTOR, THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, TO PETITION OF VARIOUS BONDHOLDERS' COMMITTEES FOR THE APPOINTMENT OF TRUSTEES.

And now comes the principal Debtor herein, The Chicago, Rock Island and Pacific Railway Company, and, for answer to the Petition of various Bondholders' Protective Committees for the appointment of Trustees, says:

1. It admits the allegations of Paragraphs First and Second of the Petition.

2. It has no knowledge or information as to the matters and things alleged in Paragraph Third of the Petition; but admits the same without prejudice to its right to demand strict proof thereof, in the event that the said matters and things become material in this proceeding.

3. It admits the allegations of Paragraph Fourth of the Petition.

4. It admits that the management and operation of the Debtor's estate has been and is now in the hands of its Board of Directors, elected by Debtor's stockholders, and in the hands of officers elected or appointed by its Board of Directors.

Further answering, the Debtor states:

1. The Debtor is a consolidated corporation formed under the laws of Illinois and Iowa, June 2, 1880, and succeeding to the corporate rights and privileges of other corporations formed under the laws of one or the other of said states as far back as 1847. At all the times herein mentioned, the Debtor's affairs have been under the management and con-

trol of its Board of Directors, elected by its stockholders, as authorized and required by the laws of Illinois and Iowa.

2. The capital stock of the Debtor outstanding at the present time, as more fully appears from File No. 6 herein, is $128,909,211.50, which is composed as follows:

7% Preferred Stock	$29,422,189
6% Preferred Stock	25,127,300
Common Stock outstanding in the hands of the public	74,359,722.50

The 7% preferred stock referred to above was subscribed and paid for by the common stockholders of the Debtor at par, as part of and pursuant to the Plan of Reorganization of the Debtor, approved by the decree of this Court entered June 12, 1917, in a cause then pending in this Court, entitled "American Steel Foundries, Complainant, against The Chicago, Rock Island and Pacific Railway Company, Defendant, In Equity No. 445."

The 6% preferred stock referred to above likewise was issued as part of and pursuant to the Plan of Reorganization approved by this Court in said proceeding. $5,000,000 thereof was subscribed and paid for in cash at par, and $20,127,300 par value thereof was issued at par for par, in full payment of claims against the Debtor, approved by this Court in said decree.

The issue of both said classes of preferred stock was approved by the Illinois Public Utilities Commission, being at that time the only public regulatory authority having jurisdiction thereof, by its Order of June 20, 1917, authorization No. 499. Both of said classes of preferred stock have full voting power in the election of Directors of the Debtor.

The common stock of the Debtor now outstanding represents part of an authorized issue of common stock of $75,000,000. When the Debtor was formed by Articles of Consolidation as aforesaid, on June 2, 1880, its authorized capital stock was fixed at $50,000,000, all common. On June 5, 1901, this was increased to $60,000,000, and on June 4, 1902, to $75,000,000. All of the said common stock is part of the common stock so authorized, and all of it represents money subscribed and paid for by the stockholders of the Debtor, at not less than the par value thereof. The Reorganization Decree of June 21, 1917, expressly provided that any stockholder not joining in the plan then approved by the Court should nevertheless continue to be a holder of the same number of shares of common stock of the Debtor as reorganized under said plan pursuant to said decree, so that the common

stock now outstanding represents the original common stock of the Debtor, as duly authorized under the laws of Illinois and Iowa in 1880, 1901 and 1902, and all thereof represents investment in the property.

3. As more fully appears from File No. 6, filed herein August 24, 1933, the entire funded debt and loans and bills payable of the Debtor, as of June 7, 1933, was $330,209,420, as follows:

Funded debt, in hands of public	$281,995,000
Funded debt of subsidiaries, in hands of public	30,370,720
Loans and bills payable	17,843,700
Total debt	$330,209,420

On the other hand, the investment in road and equipment in the Debtor's property at the said date, as appears from the same file, was $198,475,669.85, and its total assets $512,317,773.23.

4. The valuation of the Debtor's properties as fixed by the Interstate Commerce Commission in 1929 is substantially in excess of its capitalization.

The final value at June 30, 1915, using 1914 prices (152 I. C. C. 709), was	$326,157,941.00
Additions and betterments, less retirements, June 30, 1915, to June 30, 1933 (representing capital investment in the property at dollar for dollar)	187,945,663.06
Total	$514,103,604.06
Excess of valuation, plus additions and betterments, less retirements, over total funded debt and loans and bills payable	$183,894,184.06

The Debtor shows, therefore, that this excess represents the actual value, as determined by the United States Government, of the equity represented by the Debtor's capital stock.

5. That the equity in the Debtor's property represented by its capital stock is of great value is further evidenced by the operating record of the Debtor's system. From January 1, 1918, to March 1, 1920, the Debtor's property was operated by the Director General of Railroads under Federal Control, and from March 1, 1920, to August 31, 1920, the Debtor was operated under a guaranty as provided in the Transportation Act. When its properties were restored to the Debtor, they were under-maintained and the operating expenses thereof had been greatly increased, by reason of the War and the policies of the Director General in the operation of the roads

under Federal Control. Nevertheless, in the ten-year period from January 1, 1921, to December 31, 1930, the Debtor's system earned not only the entire fixed charges on its funded debt and the full dividends on its two classes of preferred stock, referred to in Paragraph 2 hereof, but approximately $51,600,000 in addition thereto, as is shown by the following figures:

ROCK ISLAND LINES.

Accumulation of Surplus from Earnings, after Payment of Fixed Charges and Full Dividends on Preferred Stocks.

	Amount Available for Dividends on Common Stock	Percentage of Common Stock	Dividends Paid on Common Stock Amount	Rate	Balance (Net Balance Income for Year, carried to Surplus, after Dividends on Common Stock).
1921—	$ 2,212,564	2.95%	.....	.....	$ 2,212,564
1922—	718,043	.96%	.....	.....	718,043
1923—	915,367	1.22%	.....	.....	915,367
1924—	3,268,035	4.36%	.....	.....	3,268,035
1925—	3,398,947	4.54%	.....	.....	3,398,947
1926—	7,948,696	10.62%	.....	.....	7,948,696
1927—	8,997,645	12.10%	$3,717,900	5%	5,279,745
1928—	9,600,511	12.91%	4,461,480	6%	5,139,031
1929—	10,440,135	14.04%	5,205,060	7%	5,235,075
1930—	4,133,044	5.56%	5,205,060	7%	*1,072,016
	$51,632,987	69.26%	$18,589,500	25%	$33,043,487

* Italics, red in Original.

These figures show that, after the payment of all fixed charges and dividends, the Debtor in the said ten-year period earned an excess of $33,000,000, which was carried to its profit and loss surplus, and the Debtor states that such sum, and other substantial sums in addition thereto, were invested in the properties comprising the trust estate.

6. The Debtor alleges that at all times the directors and officers of the Debtor are equally concerned with the interests of all classes of creditors, as that term is used in Section 77 of the Bankruptcy Act, and act with full impartiality and with the best interest of the trust estate as a whole, for the purpose of conserving the property and assets of the Debtor. The Debtor further alleges that any conflicts which may arise between stockholders and creditors are only such conflicts as are inherent in their respective positions, and that there are

no special or unusual circumstances involved in these proceedings giving rise to such conflicts; and that the existence of the usual kind of conflicting interests affords no ground for the appointment of Trustees herein, because Congress, by enacting a statute which permits a Debtor to remain in possession of its property, necessarily determined that the existence of such usual conflicting interests was in itself no ground for the appointment of Trustees.

7. The Debtor further objects to the appointment of Trustees herein, because such appointment would serve no useful purpose. It alleges that all matters presented to the Court for its consideration or decision are presented only after full consideration, conference and discussion with the various petitioning Bondholders' Committees and their Counsel, and with the Reconstruction Finance Corporation; and upon approval thereafter granted by the Board of Directors of the Debtor; that the Board of Directors of the Debtor is familiar with the Debtor's properties and its problems, and to deprive it of the management and control of the trust estate would not only cause irreparable damage to the owners of the very large equity therein represented by the Debtor's capital stock, but would add greatly to the responsibilities and difficulties of the Court in the management of the trust estate.

8. The Debtor further shows that the appointment of Trustees would entail substantial additional expense on the trust estate, for the compensation of the Trustees and their necessary office forces and expenses: all of which is unnecessary.

Wherefore, the Debtor prays that the Petition of the said Bondholders' Committees for the appointment of Trustees be denied.

Respectfully submitted,
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,
Debtor,
W. H. Burns,
Vice President.

MARCUS L. BELL,
25 Broad Street,
New York, N. Y.
W. F. DICKINSON,
W. F. PETER,
1025 LaSalle St. Station,
Chicago, Illinois,
Attorneys for Debtor.

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

W. H. BURNS, being duly sworn, deposes and says that he is an officer, to wit, Vice President, of The Chicago, Rock Island and Pacific Railway Company, a railroad corporation, the Debtor mentioned and described in the foregoing answer; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief; and as to those matters he believes them to be true; also that the said answer is filed in good faith.

W. H. Burns.

Subscribed and sworn to before me this 10th day of October, 1933.

W. J. Gedl,
Notary Public.

(Seal)

And on, to-wit: the 24th day of October, 1933, came The Chicago, Rock Island and Gulf Railway Company, Choctaw, Oklahoma and Gulf Railroad Company, Peoria Terminal Company, Rock Island and Dardanelle Railway Company, Rock Island, Stuttgart and Southern Railway Company, Rock Island Memphis Terminal Railway Company and Rock Island Omaha Terminal Railway Company, by their attorneys and filed in the Clerk's office of said court a certain petition for Order No. 25, in words and figures following, to-wit:

Petition for Order No. 25.

* * (Caption) * *

PETITION OF THE CHICAGO, ROCK ISLAND AND GULF RAILWAY COMPANY, CHOCTAW, OKLAHOMA AND GULF RAILROAD COMPANY, PEORIA TERMINAL COMPANY, ROCK ISLAND AND DARDANELLE RAILWAY COMPANY, ROCK ISLAND, STUTTGART AND SOUTHERN RAILWAY COMPANY, ROCK ISLAND MEMPHIS TERMINAL RAILWAY COMPANY, ROCK ISLAND OMAHA TERMINAL RAILWAY COMPANY.

To the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

The Petition of the above named Companies respectfully shows:

1. The Chicago, Rock Island and Pacific Railway Company, Principal Debtor herein (hereinafter referred to as the "Pacific Company"), is the owner of the entire capital stock (except Directors' qualifying shares), having power to vote for the election of Directors, of each of the petitioners herein.

2. (a) The Chicago, Rock Island and Gulf Railway Company (hereinafter referred to as the "Gulf"), is a corporation of the State of Texas, owning and operating approximately 700 miles of railroad in said state.

(b) Choctaw, Oklahoma and Gulf Railroad Company (hereinafter referred to as the "Choctaw") is a corporation formed under certain laws of the United States, owning approximately 942 miles of railroad and appurtenances in Tennessee, Arkansas and Oklahoma, all of which are operated by the Pacific Company under a lease for 999 years from March 24, 1904.

(c) Peoria Terminal Company (hereinafter referred to as the "Peoria Terminal") is a corporation of the State of Illinois, owning approximately 9 miles of tracks and terminal facilities in Peoria and Tazewell Counties, Illinois, and operating under lease approximately 5 miles of tracks and terminal facilities in Peoria County, Illinois.

(d) Rock Island and Dardanelle Railway Company (hereinafter referred to as the "Dardanelle") is a corporation of

the State of Arkansas, owning approximately 14 miles of railroad in said state, all of which is operated by the Pacific Company under a lease for 999 years from December 1, 1911.

(e) Rock Island, Stuttgart and Southern Railway Company (hereinafter referred to as the "Stuttgart") is a corporation of the State of Arkansas, owning approximately 21 miles of railroad in said state, all of which is operated by the Pacific Company under a lease for 999 years from February 1, 1914.

(f) Rock Island Memphis Terminal Railway Company (hereinafter referred to as the "Memphis Terminal") is a corporation of the State of Tennessee, owning certain tracks and terminal facilities in the city of Memphis, Tennessee, all of which are operated by the Pacific Company under a lease terminable at will.

(g) Rock Island Omaha Terminal Railway Company (hereinafter referred to as the "Omaha Terminal") is a corporation of the State of Nebraska, owning certain railway tracks and terminals facilities in the city of Omaha, Nebraska, all of which are operated by the Pacific Company under a lease terminable at will.

3. On June 7, 1933, the Pacific Company, Debtor, filed in this Court, in the above entitled proceedings, a petition stating that it is unable to meet its debts as they mature, and that it desires to effect a plan of reorganization pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy; and on said date this Court approved said petition as properly filed.

4. Each of the Debtors joining in this Petition is without sufficient funds to pay and discharge its obligations and is unable to meet its debts as they mature. More specifically said obligations and debts are as follows:

(a) The Gulf is unable to meet the principal of and interest on the following obligations:

1. $1,365,000 Chicago, Rock Island and Texas First Mortgage 6% Gold Bonds, due July 1, 1933, which are owned by the Pacific Company and pledged under its General Gold Bond Mortgage.

2. $3,392,000 Main Line First Mortgage 6% Gold Bonds;
$3,093,000 Amarillo Division First Mortgage 6% Gold Bonds;
$1,475,000 Mexico Division First Mortgage 6% Gold Bonds;
all due January 1, 1934, and all owned by the Pacific Company and pledged under its First and Refunding Mortgage.

(b) The Choctaw is unable to meet the semi-annual interest due November 1, 1933, on its Consolidated First Mortgage 5% Gold Bonds, due May 1, 1952. $10,911,000 of the said bonds have been issued, of which $5,411,000 are outstanding in the hands of the public and $5,500,000 are owned by the Pacific Company, and pledged under its First and Refunding Mortgage.

(c) The Peoria Terminal is unable to meet the interest currently maturing on its First Mortgage 4% Thirty-year Gold Bonds, due January 1, 1937, of which $944,000 are outstanding in the hands of the public, and of its General Mortgage 5% Gold Bonds, due March 1, 1956, of which $1,000,000 are owned by the Pacific Company, and pledged under its First and Refunding Mortgage.

(d) The Dardanelle is unable to meet the principal of or interest on $100,000 of its First Mortgage Gold Bonds, due December 1, 1934, all of which are owned by the Pacific Company, and pledged with the Reconstruction Finance Corporation.

(e) The Stuttgart is unable to meet the principal of or interest on $180,000 of its First Mortgage Gold Bonds, due December 1, 1934, all of which are owned by the Pacific Company, and pledged by it under its First and Refunding Mortgage.

(f) The Memphis Terminal is unable to meet the principal of or interest on $900,000 Depot First Mortgage 5% Gold Bonds, due May 1, 1934, and $400,000 Terminal First Mortgage 5% Gold Bonds, due April 1, 1934, all of which bonds are owned by the Pacific Company, and pledged with the Reconstruction Finance Corporation.

(g) The Omaha Terminal is unable to meet the principal of or interest on $906,000 of its First Mortgage 6% Gold Bonds, due June 1, 1934, all of which are owned by the Pacific Company, and pledged with the Reconstruction Finance Corporation.

5. A copy of this Petition will forthwith be filed with the Interstate Commerce Commission.

6. That owing to the large number of creditors of the Debtors joining in this Petition and the great amount of clerical and other labor required to make complete lists of creditors and other information required by clause (c) of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, it is not practicable to prepare said lists within fifteen days and that for that reason the Debtors desire an extension of said time.

7. That the filing of this Petition by the said Debtors joining herein was duly authorized by said Debtors by resolutions of their respective Boards of Directors thereunto duly authorized.

Wherefore, the Debtors hereinabove mentioned pray that an Order may be entered herein approving this Petition as properly filed by each of said Debtors under said Section 77 and that they may each be allowed to effect a plan of reorganization in connection with, or as part of, the plan of reorganization of the Pacific Company referred to in said Petition of said Debtor; that the time to prepare the lists of bondholders, creditors and stockholders of the Debtors joining in this Petition be extended to December 31, 1933, and that the Court will enter an appropriate Order granting to the petitioning Debtors such rights and powers as may be requisite for the carrying on of their business and the preservation of their properties, and that they be granted all other and further relief to which they may be entitled.

THE CHICAGO, ROCK ISLAND AND GULF RAILWAY COMPANY,
By J. E. GORMAN,
President.

CHOCTAW, OKLAHOMA AND GULF RAILROAD COMPANY,
By J. E. GORMAN,
President.

PEORIA TERMINAL COMPANY,
By J. E. GORMAN,
President.

ROCK ISLAND AND DARDANELLE RAILWAY COMPANY,
By J. E. GORMAN,
President.

ROCK ISLAND, STUTTGART AND SOUTHERN RAILWAY COMPANY,
By J. E. GORMAN,
President.

ROCK ISLAND MEMPHIS TERMINAL RAILWAY COMPANY,
By J. E. GORMAN,
President.

ROCK ISLAND OMAHA TERMINAL RAILWAY COMPANY,
By J. E. GORMAN,
President.

MARCUS L. BELL,
25 Broad Street,
New York.
W. F. DICKINSON,
W. F. PETER,
1025 LaSalle Street Station,
Chicago, Illinois.
Attorneys for Debtors.

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

J. E. GORMAN, being duly sworn, deposes and says that he is an officer, to wit, the President of each of the Debtors mentioned and described in the foregoing Petition, that is,

The Chicago, Rock Island and Gulf Railway Company,
Choctaw, Oklahoma and Gulf Railroad Company,
Peoria Terminal Company,
Rock Island and Dardanelle Railway Company,
Rock Island, Stuttgart and Southern Railway Company,
Rock Island Memphis Terminal Railway Company,
Rock Island Omaha Terminal Railway Company;

that he has read the foregoing Petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief.

J. E. Gorman.

Subscribed and sworn to before me this 24th day of October, 1933.

W. J. GEDL,
Notary Public.

(Seal)

And afterwards, to wit, on the 24th day of October, 1933, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

Order No. 25.

* * * (Caption) * * *

ORDER ON PETITION OF SUBSIDIARY CORPORATIONS.

Upon due consideration of the Petition of
The Chicago, Rock Island and Gulf Railway Company,
Choctaw, Oklahoma and Gulf Railroad Company,
Peoria Terminal Company,
Rock Island and Dardanelle Railway Company,
Rock Island, Stuttgart and Southern Railway Company,
Rock Island Memphis Terminal Railway Company,
Rock Island Omaha Terminal Railway Company,
the above named Debtors, verified October 24, 1933, and this day filed herein under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, showing that more than a majority of the capital stock of each of the said Debtors is owned by The Chicago, Rock Island and Pacific Railway Company, and that each of the said Debtors is unable to meet its debts as they mature, and that each of them desires to effect a plan of reorganization in connection with, or as part of, the plan of reorganization of The Chicago, Rock Island and Pacific Railway Company, Debtor herein, pursuant to said Section 77, and the Court being satisfied that the said Petition complies with said Section 77, and is filed in good faith, it is

Ordered:

1. That the Petition of
The Chicago, Rock Island and Gulf Railway Company,
Choctaw, Oklahoma and Gulf Railroad Company,
Peoria Terminal Company,
Rock Island and Dardanelle Railway Company,
Rock Island, Stuttgart and Southern Railway Company,
Rock Island Memphis Terminal Railway Company,
Rock Island Omaha Terminal Railway Company,
this day filed, be and it is hereby approved as properly filed under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, and in this proceeding in which the Petition of The Chicago, Rock Island and Pacific Railway Company has been filed.

2. That The Chicago, Rock Island and Pacific Railway Company, principal debtor herein, is authorized and directed

to continue in possession of and to operate the properties of the said Debtors

Choctaw, Oklahoma and Gulf Railroad Company,
Rock Island and Dardanelle Railway Company,
Rock Island, Stuttgart and Southern Railway Company,
Rock Island Memphis Terminal Railway Company,
Rock Island Omaha Terminal Railway Company;

that the Debtors

The Chicago, Rock Island and Gulf Railway Company,
Peoria Terminal Company,

are authorized and directed to continue in possession of and to operate their respective properties until the further order of this Court; said possession and operation to be continued under all the terms and conditions of Order No. 1 entered herein June 7, 1933, and Order No. 1-A entered herein June 8, 1933; and in all other respects the provisions of the said Orders are extended to and made applicable to each of the said Debtors.

3. That the said Debtors, respectively, shall close their books of account as of the close of business October 31, 1933, and shall open new books of account as of the opening of business on the following day, and cause to be kept therein due and proper accounts of the earnings, expenses, receipts and disbursements of the Debtors, and shall preserve proper vouchers for all payments made on account thereof, and shall deposit the moneys coming into their hands in such of the banks in which funds of the Debtors are presently deposited as shall be selected by the respective Debtors, or in such other bank or banks as shall be selected by them and approved by this Court.

4. That on or before December 15, 1933, the Debtors joining in said petition shall file with the Clerk of this Court a statement of their assets and liabilities as of the close of business on October 31, 1933, and on or before the 15th day of each calendar month thereafter shall file with said Clerk a statement of their assets and liabilities as of the close of business on the last day of the second preceding month, together with a summary statement of their revenues and expenses of each such calendar month. Such statements may be made on a consolidated basis as to any Debtors all of whose capital stock is owned by any other Debtor. All such statements shall be certified as correct by the chief accounting officer of the respective Debtors.

That Paragraph No. 4 of the Order of August 28, 1933, on the Petition of St. Paul and Kansas City Short Line Rail-

road Company and Rock Island, Arkansas and Louisiana Railroad Company, is hereby modified in respect of the time of filing with the Clerk of this Court statements of their respective assets and liabilities and of their revenues and expenses of each calendar month; said companies shall hereafter file such statements of assets and liabilities as of the close of business of each calendar month and of their revenues and expenses for such calendar month, on or before the 15th day of the second succeeding month, beginning November 15, 1933.

5. That for cause shown, the time within which the Debtors joining in said Petition shall prepare the lists of their bondholders, creditors and stockholders, and other information required by clause (c) of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy is hereby extended to December 31, 1933.

6. That this Court reserves full right and jurisdiction to make from time to time such orders as the Court shall deem proper, appointing a trustee or trustees of the Debtor's property and estate, with all the title and powers of such trustee or trustees under and subject to the provisions of the Acts of Congress relating to bankruptcy, including the power to operate the business of the Debtors, fixing the time within which any plan of reorganization shall be proposed, accepted and confirmed, requiring the Debtors to file such schedules and submit such information as may be necessary to disclose the conduct of the Debtor's affairs and the fairness of any proposed plan, fixing a reasonable time within which claims and interests of creditors and stockholders may be filed or evidenced and allowed and the division of creditors and stockholders into classes according to the nature of their respective claims and interests, and in general such orders amplifying, extending, limiting, or otherwise modifying this Order as to the Court may at any time seem proper.

Signed:

JAMES H. WILKERSON,
Judge.

Dated October ....., 1933.

And on, to wit, the 25th day of October, 1933, came the Mississippi Valley Trust Company by its attorneys and filed in the Clerk's office of said Court a certain affidavit of Milton R. Stahl in support of its special appearance in words and figures following, to wit:

* * (Caption) * *

AFFIDAVIT.

MILTON R. STAHL, being duly sworn states upon his oath, that he is a Vice President of the Mississippi Valley Trust Company, which has filed herein its special appearance for the purpose of objecting to the jurisdiction of the Court over the person of the said Mississippi Valley Trust Company. Affiant states in support of said special appearance and objection to the jurisdiction of this Court over its person that the Mississippi Valley Trust Company is a corporation organized under the laws of the State of Missouri with its principal office in the City of St. Louis, Missouri; that it has in its possession in the City of St. Louis, Missouri, the pledged securities mentioned in the debtor's petition herein; that it is not a party to this proceeding; that no process has been issued by this Court against it; that it has never been served herein, but that on or about the ..... day of September, 1933, it received through the mails a registered letter containing a copy of debtor's petition, together with a notice that said petition would be presented to this Court on September 26, 1933. Affiant further states that neither it nor the securities in its hands as pledgee are within the jurisdiction of the District Court of the United States for the Northern District of Illinois.

MILTON R. STAHL.

Subscribed and sworn to before me at the City of St. Louis, Missouri, this 24th day of October, 1933.

My commission expires July 4th, 1936.

FRED W. TROGDON,
Notary Public, City of St. Louis, Mo.

(Notarial Seal)

And afterwards, to wit, on the 22d day of November, 1933, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge appears the following entry, to wit:

Order No. 15A.

• • (Caption) • •

ORDER ENJOINING THE SALE OR DISPOSITION OF COLLATERAL BY RECONSTRUCTION FINANCE CORPORATION AND BANKS.

On this day coming on to be heard the Petition of the Principal Debtor, The Chicago, Rock Island and Pacific Railway Company, respecting the payment of interest on its collateral notes, and asking that the Court determine whether the Court should enjoin and restrain the holders of the said collateral notes, in the event of default in the payment of interest thereon, or other default therein, from selling or converting the said collateral, or any part thereof, and that the Court issue such injunction;

And it appearing that notice of the filing and presentation of said Petition has been duly served upon the holders of all of the said collateral notes, upon the trustee or trustees of each of the Debtor's mortgages and equipment trusts, and upon Counsel for each of the Protective Committees representing bondholders of the Debtor's system; and the Debtor appearing by Marcus L. Bell, W. F. Dickinson and W. F. Peter, Solicitors, and the following also appearing:

Edward W. Bourne, Esq.,
of Alexander & Green, Counsel for Protective Committee of General Mortgage 4% Gold Bonds of the Debtor,

Elihu Root, Jr., Esq.,
of Root, Clark, Buckner & Ballantine, Counsel for Protective Committee of Debtor's First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds,

Edward C. Bailly, Esq.,
of Hornblower, Miller, Miller & Boston, Counsel for Protective Committee of Burlington, Cedar Rapids & Northern Consolidated 5% Gold Bonds,

A. M. Heusten, Esq.,
of White & Case, Counsel for Protective Committee of St. Paul & Kansas City Short Line 4½% Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds;

William Lloyd Kitchel, Esq.,
of Cadwalader, Wickersham & Taft, Counsel for Protective Committee for 30-Year 4½% Convertible Gold Bonds;

also the following appearing specially:

C. M. Clay, John L. Hopkins and Charles O. Parker, Counsel for Reconstruction Finance Corporation,

Paul Miller, Esq.,
of Rushmore, Bizbee & Stern, Counsel for The Chase National Bank of the City of New York,

Edward R. Sims and James P. Carey, Jr.,
of Sims, Stransky, Brewer & Poust, Counsel for New York Trust Company,

Milton R. Stahl, Esq., of St. Louis, Missouri,
Counsel for Mississippi Valley Trust Company of St. Louis,

Herbert A. Friedlich, Esq.,
of Mayer, Meyer, Austrian & Platt, Counsel for Continental Illinois National Bank and Trust Company of Chicago,

P. M. Chadwick, Esq.,
of Chapman & Cutler, Counsel for Harris Trust & Savings Bank of Chicago.

And the Court having heard the arguments of counsel for the Debtor, for the Protective Committee of General Mortgage 4% Gold Bonds, for the Protective Committee of First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds, for the Protective Committee of Burlington, Cedar Rapids & Northern Consolidated 5% Gold Bonds, for the Protective Committee of St. Paul & Kansas City Short Line 4½% Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds and for the Protective Committee for 30-Year 4½% Convertible Gold Bonds, in support of the issuance of such an injunction; and having heard the arguments of counsel for the Reconstruction Finance Corporation, The Chase National Bank of the City of New York, New York Trust Company, Mississippi Valley Trust Company of St. Louis, Continental Illinois National Bank and Trust Company of Chicago, Harris Trust & Savings Bank of Chicago; and the Court having read the petition of the Debtor above referred to and the affidavit of Dwight S. Beebe, verified September 25, 1933, submitted by the Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds, and the affidavits of James P.

Carey, verified September 26, 1933, William H. Moorhead, verified September 23, 1933, and Milton R. Stahl, verified October 24, 1933, submitted on behalf of New York Trust Company, The Chase National Bank and Mississippi Valley Trust Company, respectively, and the Court being satisfied that the facts set forth in the petition of the Debtor, and in said affidavit of Dwight S. Beebe are true and accurate;

And it appearing to the Court that collateral owned by the Debtor of an aggregate face value of approximately $54,000,000, consisting of obligations of the Debtor and of subsidiary corporations, secured by mortgage lien upon properties constituting part of the Debtor's system of railroads, is pledged with the said Reconstruction Finance Corporation and said banks to secure indebtedness due March 1, 1934, aggregating approximately $17,784,877.58;

And it further appearing that approximately $66,495,000 face amount of bonds of the Debtor and of subsidiary companies of the Debtor's system of railroads, and $30,244,050 face amount of capital stock of said subsidiary companies, are pledged under the Debtor's First and Refunding Gold Bond Mortgage; and that $[illegible]00,000 face amount of the Debtor's First and Refunding Mortgage 4% Gold Bonds are pledged under the Indenture securing the Secured 4½% Gold Bonds of the Debtor, and that $1,365,000 face amount of bonds and $2,645,000 face amount of capital stock of subsidiary companies of the Debtor's system are pledged under the General Gold Bond Mortgage of the Debtor;

And it further appearing that each of the said collateral notes contains provisions that if the Railway Company shall become insolvent, however such insolvency may be evidenced, or if a receiver shall be appointed of any of the property or assets, or any part thereof, of the Railway Company, or if interest thereon be not paid when due, the holders thereof may sell and dispose of the collateral securing the same; and that there is danger that the holders of said notes will claim that one or more of the events entitling them to sell said collateral have occurred;

And it further appearing to the Court that a sale of the said collateral, or any part thereof, by the Reconstruction Finance Corporation, or by the said banks, would be inconsistent with the purposes of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, and would hinder, impede, obstruct, delay, and in effect prevent the orderly preparation and consummation of a plan of reorgani-

zation of the trust estate under said Section 77, which is the sole purpose of said Section 77, under which these proceedings are now pending;

And it further appearing that, under the provisions of Paragraph (a) of said Section 77, this Court, having approved the Debtor's petition, has during the pendency of these proceedings exclusive jurisdiction of the Debtor and its property, wherever located; and that under paragraph 15 of Section 2 of the Acts of Congress relating to bankruptcy, this Court has power to make such orders, issue such process, and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of the said Acts of Congress relating to bankruptcy;

And it further appearing that it is necessary for the enforcement of the provisions of Section 77 that the said holders of said collateral be enjoined and restrained from selling or disposing of the same, or any part thereof, pending the preparation and consummation of said reorganization plan;

Now, Therefore, it is

Ordered, that Reconstruction Finance Corporation, The Chase National Bank of the City of New York, New York Trust Company, Mississippi Valley Trust Company of St. Louis, Continental Illinois National Bank and Trust Company of Chicago, and Harris Trust and Savings Bank of Chicago, be and they each hereby are restrained and enjoined from converting, selling, or otherwise disposing of the collateral held by them as security for promissory notes of the Debtor, or any part thereof, until further order of this Court.

No order is entered at this time with respect to the sale or disposition of the collateral pledged under the Debtor's General Gold Bond Mortgage, its First and Refunding Gold Bond Mortgage and the Indenture securing its Secured 4½% Gold Bonds, Series A, but the matter is reserved for future action upon appropriate application.

Enter:

JAMES H. WILKERSON,
Judge.

And afterwards, to wit, on the 22d day of November, 1933, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge appears the following entry, to wit:

Order No. 21.

* * (Caption) * *

ORDER APPOINTING TRUSTEES.

It appearing to the Court that it is advisable at this time to appoint trustees of the estates of all of the debtors heretofore or hereafter made parties to this proceeding, and it appearing further that the Interstate Commerce Commission has selected and designated a panel of standing trustees, qualified for service as such, pursuant to subdivision (c) of Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, which panel contains the names of Frank O. Lowden, of Oregon, Illinois, James E. Gorman, of Chicago, Illinois, and Joseph B. Fleming, of Chicago, Illinois,

It Is Ordered:

1. That the said Frank O. Lowden, James E. Gorman and Joseph B. Fleming, be and they hereby are temporarily appointed trustees of all and singular the railroads, lands, properties, estates, rights and franchises, of whatever character and wherever situated, of The Chicago, Rock Island and Pacific Railway Company; St. Paul and Kansas City Short Line Railroad Company; Rock Island, Arkansas and Louisiana Railroad Company; The Chicago, Rock Island and Gulf Railway Company; Choctaw, Oklahoma and Gulf Railroad Company; Peoria Terminal Company; Rock Island and Dardenelle Railway Company; Rock Island, Stuttgart and Southern Railway Company; Rock Island Memphis Terminal Railway Company; and Rock Island Omaha Terminal Railway Company, Debtors; which appointment, as well as the other provisions of this order, shall be effective as of the beginning of business on December 1, 1933. Such appointment shall apply also to the estates of all debtors hereafter becoming parties to this proceeding, from and after the respective dates of approval of the petitions of such subsequent debtors. The said Trustees shall have all of the title to the several estates of said debtors, and subject to the control of the Court and consistently with the provisions of Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, and General Orders in Bankruptcy as amended, effective April 24, 1933, shall exercise all of the powers of Trustees appointed pursuant to Section 44 or any other section of the Acts of Congress relating to Bankruptcy.

2. The said Trustees shall have all of the powers, rights, privileges, duties and obligations heretofore granted to or imposed upon the respective Debtors, or any of them, pursuant to any and all of the orders heretofore entered by the Court in this proceeding, and each and all of the orders heretofore entered in this proceeding shall, with respect to the Trustees and the property in their possession, be of like force and effect as though said Trustees were therein specifically named in place of said respective Debtors, all of said orders being hereby incorporated in and made a part of this order by reference.

3. That within five (5) days from and after December 1, 1933, said Trustees shall each execute and file with the Clerk of this Court a bond or bonds with one or more sureties approved by the Clerk of this Court, for the benefit of whom it may concern, in the sum of fifty thousand dollars ($50,000.00), conditioned to the effect that they will well and truly perform the duties of their office, and duly account for all moneys and property whatsoever which may come into their hands, and abide by and perform all things which they shall be directed by the Court to do.

4. That the Debtors shall give notice to their creditors and stockholders of a hearing to be held before the undersigned Judge, in the Court Room of the District Court of the United States, Northern District of Illinois, Eastern Division, United States Court House, Chicago, Illinois, on the 28th day of December, 1933, at ten o'clock in the forenoon, Central Standard Time, to determine whether such appointment of said Trustees shall be made permanent or shall be terminated, or a substitute trustee or trustees or an additional trustee or trustees shall be appointed by the Court, by publishing notice of such hearing once a week for two (2) successive weeks in one daily newspaper, published and of general circulation in each of the cities of Chicago, Illinois, Peoria, Illinois, St. Paul, Minnesota, Des Moines, Iowa, Omaha, Nebraska, Kansas City, Missouri, Oklahoma City, Oklahoma, Little Rock, Arkansas, Memphis, Tennessee, Fort Worth, Texas, and New York City, New York.

5. That all persons, firms and corporations, whatsoever and wheresoever situated, located or domiciled, hereby are restrained and enjoined from interfering with, attaching, garnisheeing, levying upon, and enforcing liens upon, or in any manner whatsoever disturbing any portion of the assets, goods, money, railroads, properties, and premises belonging

to, or in the possession of, the said Trustees, or from taking possession of, or in any manner interfering with the same, or any part thereof, or from interfering in any manner to prevent the discharge by the said Trustees of their duties in the operation of said properties and business under the orders of this Court.

6. That the Court reserves full right and jurisdiction to make from time to time such additional orders herein as to the Court shall seem proper, as well as any orders amplifying, extending, limiting or otherwise modifying this order, and in all respects to regulate and control the conduct of the said Trustees.

Enter:

JAMES H. WILKERSON,
United States District Judge.

November 22, 1933.

And afterwards, to wit, on the 1st day of December, 1933, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge appears the following entry, to wit:

Order No. 21-A.

* * (Caption) * *

ORDER APPROVING BONDS OF TRUSTEES.

It appearing to the Court that Frank O. Lowden, James E. Gorman and Joseph B. Fleming, duly appointed Trustees of the estates of the above named Debtor and other debtors named in said proceeding, have given bonds with sureties for the faithful performance of their official duties, each in the amount fixed by order of this Court, to-wit, the sum of $50,000,

It Is Ordered:

That each of the said bonds be, and the same is hereby, approved.

Enter:

JAMES H. WILKERSON
Judge.

And on, to-wit: the 11th day of January, 1934, came The Chase National Bank of the City of New York, The New York Trust Company, Continental Illinois National Bank and Trust Company of Chicago, Reconstruction Finance Corporation, Mississippi Valley Trust Company and Harris Trust & Savings Bank by their attorneys and filed in the Clerk's office of said court a certain Notice of Lodgment of Statement of Evidence in words and figures following, to-wit:

* * (Caption) * *

NOTICE OF LODGMENT OF STATEMENT OF EVIDENCE IN DISTRICT COURT CLERK'S OFFICE.

To: Marcus L. Bell, Esq., W. F. Dickinson, Esq., W. F. Peter, Esq., 25 Broad Street, New York City, Counsel for The Chicago, Rock Island and Pacific Railroad Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

Root, Clark, Buckner & Ballantine, Esq., 31 Nassau Street, New York City, Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and Debtor's Secured 4½% Gold Bonds.

Cadwalader, Wickersham & Taft, Esqs., 40 Wall Street, New York City, Counsel for the Protective Committee of the Debtor's Thirty-Year 4½% Convertible Gold Bonds.

White & Case, Esqs., 14 Wall Street, New York City, Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

Alexander & Green, Esqs., 120 Broadway, New York City, Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.

Hornblower Miller Miller & Boston, Esqs., 15 Broad Street, New York City, Counsel for the Protective Committee of the Burlington, Cedar Rapids & Northern Railway Company Consolidated 5% Gold Bonds.

You Will Please Take Notice that on Tuesday, December 26, 1933, pursuant to Rule 75 of the Rules of Practice in Equity, the undersigned lodged in the Office of the Clerk of the District Court of the United States, for the Northern District of Illinois, Eastern Division, a Statement of Evidence in the above-entitled cause, and you are further notified that we will on January 11, 1934, at the hour of 10:00 o'clock in the forenoon, Central Standard Time, or as soon thereafter as counsel can be heard, present said Statement of Evidence to the Honorable James H. Wilkerson, District Judge, in the court room usually occupied by him in the Federal Building, Chicago, Illinois, for approval.

For your convenience, a copy of said Statement of Evidence is herewith served upon you.

RUSHMORE BISBEE & STERN
Attorneys for The Chase National Bank of the City of New York, appearing specially and solely for the purposes aforesaid.

SIMS STRANSKY & BREWER
Attorneys for The New York Trust Company, appearing specially and solely for the purposes aforesaid.

MAYER, MEYER, AUSTRIAN & PLATT
Attorneys for Continental Illinois National Bank and Trust Company, appearing specially and solely for the purposes aforesaid.

HOPKINS STARR & GODMAN
Attorneys for Reconstruction Finance Corporation, appearing specially and solely for the purposes aforesaid.

S. MAYNER WALLACE
Attorneys for Mississippi Valley Trust Company, appearing specially and solely for the purposes aforesaid.

CHAPMAN & CUTLER
Attorneys for Harris Trust & Savings Bank, appearing specially and solely for the purposes aforesaid.

December 27, 1933.

Service of the above Notice together with a copy of the

within described Statement of Evidence is hereby acknowledged this 29 day of December, 1933.

MARCUS L. BELL,
W. F. DICKINSON
W. F. PETER
Counsel for The Chicago, Rock Island and Pacific Railway Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

Copy received December 29, 1933.

ROOT, CLARK, BUCKNER & BALLANTINE
Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and the Debtor's Secured 4½% Gold Bonds.

CADWALADER, WICHERSHAM & TAFT,
Counsel for the Protective Committee of the Debtor's Thirty-Year 4½% Convertible Gold Bonds.

WHITE & CASE
Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.
12-29-33

ALEXANDER & GREEN
Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.
12-29-33

HORNBLOWER MILLER MILLER & BOSTON
Counsel for the Protective Committee of the Burlington, Cedar Rauids & Northern Railway Company Consolidated 5% Gold Bonds.

And on, to-wit: the 12th day of January, 1934, came The Chase National Bank of the City of New York, The New York Trust Company, Mississippi Valley Trust Company, the Continental Illinois National Bank and Trust Company of Chicago, Reconstruction Finance Corporation, and Harris Trust & Savings Bank by their attorneys and filed in the Clerk's office of said court a certain Statement of Evidence in words and figures following, to-wit:

* * (Caption) * *

STATEMENT OF EVIDENCE UNDER EQUITY RULE 75.

Be it remembered that in the above-entitled cause there came on regularly for trial before the above court sitting in equity on the 26th day of September, 1933, the petition of The Chicago, Rock Island, and Pacific Railway Company, Debtor, for an injunction against The Continental Illinois National Bank and Trust Company of Chicago, the Chase National Bank of the City of New York, Reconstruction Finance Corporation, The New York Trust Company, Mississippi Valley Trust Company, and Harris Trust and Savings Bank to enjoin each of them from converting, selling or otherwise disposing of collateral held by each of them as security for promissory notes of the debtor.

The Chase National Bank of the City of New York, The New York Trust Company and Mississippi Valley Trust Company each appeared specially and solely for the purpose of contesting and objecting to the jurisdiction of this court over the person of each of them.

The Continental Illinois National Bank and Trust Company of Chicago, Reconstruction Finance Corporation and Harris Trust & Savings Bank each appeared specially and solely for the purpose of denying and objecting to the jurisdiction of this court over the subject matter of their respective persons or in this summary proceeding to enter the injunction order prayed on.

Appearances:

Marcus L. Bell, Esq., W. F. Dickinson, Esq., and W. F. Peter, Esq., for the Debtor,

Edward W. Bourne, Esq., of Alexander & Green, for Protective Committee of General Mortgage 4% Gold Bonds of the Debtor,

Elihu Root, Jr., Esq., of Root, Clark, Buckner & Ballantine, for Protective Committee of Debtor's First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds,

Edward C. Bailly, Esq., of Hornblower, Miller, Miller & Boston, for Protective Committee of Burlington, Cedar Rapids & Northern Consolidated 5% Gold Bonds,

A. M. Heusten, Esq., of White & Case, for Protective Committee of St. Paul & Kansas City Short Line 4½% Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

William Lloyd Kitchell, Esq., of Cadwalader, Wickershaw & Taft, for Protective Committee for 30-Year 4½% Convertible Gold Bonds,

C. M. Clay, John L. Hopkins, and Charles O. Parker, for Reconstruction Finance Corporation,

Paul Miller, Esq., of Rushmore, Bizbee & Stern, for The Chase National Bank of the City of New York,

Edwin W. Sims and James P. Carey, Jr., of Sims, Stransky & Brewer, for New York Trust Company,

Milton R. Stahl, Esq., of St. Louis, Missouri, for Mississippi Valley Trust Company of St. Louis,

Herbert A. Friedlich, Esq., of Mayer, Meyer, Austrian & Platt, for Continental Illinois National Bank and Trust Company of Chicago,

P. M. Chadwick, Esq., of Chapman & Cutler, for Harris Trust & Savings Bank of Chicago.

There was, without objection, offered and received in evidence on behalf of the Protective Committee for the First and Refunding Mortgage 4% Gold Bonds, due April 1, 1934, and Secured 4½% Gold Bonds, Series A, due September 1, 1952, of the Debtor, regarding the petition of the Debtor respecting the payment of interest on collateral loans, and for an injunction against the sale of the collateral, an affidavit of Dwight S. Beebe, which is in words and figures as follows, to-wit:

State of New York, }
County of New York. } ss.:

DWIGHT S. BEEBE, being duly sworn, says:

1. I am Chairman of the Protective Committee for First and Refunding Mortgage 4% Gold Bonds, due April 1, 1934, and Secured 4½% Gold Bonds, Series A, due September 1, 1952, of the Debtor, which consists of the individuals hereinafter named acting under a Deposit Agreement, dated July 21, 1933 (hereinafter sometimes called the Committee).

2. This affidavit is submitted in support of the application of the Debtor for an injunction restraining Reconstruction Finance Corporation and the Banks therein mentioned from selling collateral held by them as security for indebtedness of the Debtor to the Reconstruction Finance Corporation and such Banks. This affidvait briefly summarizes the position of the Committee regarding such application of the Debtor and supplies certain additional facts not contained in the application of the Debtor which the Committee believes may be relevant.

3. The Committee was formed at the request of holders of large amounts of such Bonds and its members, listed below, are associated with the respective institutions set forth opposite their names:

Dwight S. Beebe, Chairman—Vice-President and Financial Manager of The Mutual Life Insurance Company of New York.

Merrel P. Callaway—Vice-President of Guaranty Trust Company of New York.

Harry C. Hagerty—Assistant Treasurer of Metropolitan Life Insurance Company of New York.

DeWitt Millhauser—Member of the firm of Speyer & Co.

John W. Stedman—Vice-President in charge of Investments of The Prudential Insurance Company of America.

Harold Stone—President of Onondaga County Savings Bank and representative of the National Association of Mutual Savings Banks.

Frederick W. Walker—Vice-President of The Northwestern Mutual Life Insurance Company.

Up to the close of business on September 21, 1933, the holders of $25,572,000 principal amount of First and Refunding Mortgage 4% Gold Bonds of the Debtor and the holders of

$9,138,500 principal amount of Secured 4½% Gold Bonds, Series A, of the Debtor had deposited such principal amount of Bonds under the aforesaid Deposit Agreement with this Committee and such Bonds have since remained on deposit with this Committee. Additional bonds of both issues are in the hands of the respective Depositaries for the Committee for the purpose of deposit with the Committee. I believe that large additional amounts of Bonds of both issues will, from time to time, be deposited with the Committee.

There are outstanding in the hands of the public $104,470,000 face amount of such First and Refunding Mortgage 4% Gold Bonds and $40,000,000 face amount of such Secured 4½% Gold Bonds.

4. I am informed and believe,

(a) that there are pledged with the Trustees under the First and Refunding Gold Bond Mortgage of the Debtor approximately $66,495,000 face amount of Bonds of the Debtor's System, and approximately $30,244,050 face amount of the capital stock of the Debtor's System, making a total of $96,739,050, face amount of capital liabilities of such System;

(b) that there are pledged with the Trustee under the Secured 4½% Gold Bond Indenture of the Debtor $45,000,000 face amount of First and Refunding Mortgage Bonds of the Debtor;

(c) that there are pledged with the Trustees under the General Gold Bond Mortgage of the Debtor $1,365,000 face amount of bonds of the Debtor's System and $2,645,000 face amount of capital stock of the Debtor's System; and

(d) that the grand total of such pledged collateral therefore amounts to $145,749,050 face amount of capital obligations of the Debtor's System.

5. I am informed and believe that, in certain events described in the Indentures under which the aforesaid Trustees are acting, such Trustees are given the right to sell such collateral. On behalf of the Committee, I request permission to submit to the Court upon the hearing of the Debtor's application copies of any one or more of such Indentures.

6. I am informed and believe that following the entry herein, on June 7, 1933, of the original order entered herein, containing a general injunction against disturbing the property of the Debtor, the Debtor caused copies thereof to be delivered to the Reconstruction Finance Corporation and to each of the five Banks mentioned in the Debtor's application.

7. The Debtor has made previous applications to pay in-

terest on the indebtedness owing to the Reconstruction Finance Corporation and the Banks, namely, the interest due August 1, 1933 and September 1, 1933. This Committee did not appear to oppose such payments, upon the stipulation of counsel for the Debtor that failure of the Committee so to do was not to be deemed a consent to, or approval of, such payments and was without prejudice to the right of the Committee to appear and oppose similar payments in the future.

8. On behalf of the Committee, I wish to point out that a decision holding that the Reconstruction Finance Corporation and the Banks should not be enjoined from selling the $54,710,000 face amount of collateral held by them would also determine that the Trustees of the three Bond issues mentioned above had the right to sell, in accordance with the terms of the above-mentioned Indentures, the $145,749,050 total face amount of capital obligations of the System pledged with them.

9. The position of this Committee, which will be more fully set forth at the hearing of the Debtor's application, is that the interests of the bondholders it represents and of the Debtor's estate generally would best be served, and the policy underlying the new amendment to the Bankruptcy Act would best be carried out, by a decision requiring all holders of secured claims to retain their collateral until a plan of reorganization is prepared, approved and put into effect. The Committee believes that, in any event, the right of holders of collateral should be definitely determined in order (a) that the Trustees under the three Bond issues mentioned, as well as the Reconstruction Finance Corporation and the Banks, may know whether they will be entitled to sell their collateral, (b) that any reorganization plan may be intelligently prepared, and (c) that the Debtor's policy regarding payment of interest on the various classes of its secured obligations may be properly determined.

The contentions of the Committee are (1) that in a proceeding under the new Section 77 of the Bankruptcy Act the Court has power to enjoin pledgees from selling collateral where it is essential in order to carry out the purpose of the proceeding, and (2) that it is essential to enjoin such sales in a case such as this where the collateral consists of obligations of the Debtor System in principal amount vastly exceeding the indebtedness.

10. The Committee therefore asks leave to file this affidavit and to be heard upon said application of the Debtor.

DWIGHT S. BEEBE.

Sworn to before me this 25th day of September, 1933.

JOSEPH A. HOWARD, JR.,
Notary Public, Queens County.

(Notarial Seal)

Queens Co. Clk's No. 869, Reg. No. 746.
N. Y. Co. Clk's No. 378, Reg. No. 4H201.
Kings Co. Clk's No. 167, Reg. No. 4154.
Commission Expires March 30, 1934.

There was offered and received in evidence in behalf of the special appearance of the Chase National Bank of the City of New York, without objection, an affidavit of William H. Moorhead, which is in words and figures as follows, to-wit:

State of New York, }
County of New York. } ss.:

WILLIAM H. MOORHEAD, being first duly sworn, deposes and says:

1. That he is an officer of The Chase National Bank of the City of New York, to-wit, a Vice-President thereof; that The Chase National Bank of the City of New York (hereinafter referred to as the 'Chase Bank'), is a national banking association organized and existing under the laws of the United States of America, and having its principal office and place of business at Pine Street, corner of Nassau Street, Borough of Manhattan, City, County and State of New York, and is a citizen of said State and a resident and inhabitant of the Southern District of New York; that the Chase Bank is not a party to this proceeding and has never been served with process herein.

2. That he has seen a copy of the petition of the debtor, The Chicago, Rock Island and Pacific Railway Company, respecting the payment of interest on its collateral loans, and is generally familiar therewith; that a copy of said petition was received at the main office of the Chase Bank in the City of New York by registered mail sometime during the morning of September 16, 1933; that attached to said copy of petition was a notice purporting to be from the attorneys for the debtor, to the effect that on Tuesday, September 26, 1933, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel could be heard, said attorneys would present a petition, substantially in the form of the attached copy, to his Honor Judge Wilkerson in the courtroom usually occupied by said judge

in Chicago; that said copy of petition and notice arrived at the principal office of the Chase Bank as aforesaid in an envelope which bore post marks indicating that said envelope was deposited in the United States mails on September 15, 1933, in New York City, New York; that except as above set forth, the Chase Bank has received no notice of the said petition and the proposed hearing thereon.

3. That this affidavit is made in connection with and in support of the appearance of the Chase Bank herein specially and solely for the purpose of contesting and objecting to the jurisdiction of the Court over the person of said Bank.

WILLIAM H. MOORHEAD.

Sworn to before me this 23rd day of September, 1933.

THOS. J. FLANAGAN,
Notary Public, Kings Co.

(Notarial Seal)

Kings Co. Clks. No. 116, Reg. No. 4112.
Certificates filed in New York County
N. Y. Co. Clks. No. 264, Reg. No. 4F140.
Commission expires March 30, 1934.

There was offered and received in evidence in support of the special appearance of The New York Trust Company, without objection, the affidavit of James P. Carey, Jr., which is in words and figures as follows, to-wit:

State of Illinois, } ss.
County of Cook. }

JAMES P. CAREY, JR., being first duly sworn, on oath deposes and says:

1. That he is the duly authorized agent of The New York Trust Company and is empowered to make this affidavit in its behalf; that The New York Trust Company, (hereinafter referred to as the 'Trust Company'), is a corporation organized and existing under and by virtue of the laws of the State of New York and is and has been for many years engaged in the general banking and trust business, having its principal office and place of business at 100 Broadway, Borough of Manhattan, City, County and State of New York, and is a citizen of said State and a resident and inhabitant of the Southern District of New York; that it has no office or place of business within this district; that the said Trust Company is not a party to this proceeding, and has never been served with process herein.

2. Affiant further states that he has seen a copy of the petition of the debtor, The Chicago, Rock Island and Pacific Railway Company, described as Petition for Order No. 15, respecting the payment of interest on its collateral loans, and is generally familiar with the contents of said petition; that a copy of said petition was received at the main office of the said Trust Company in the City of New York, by registered mail on or about the 16th day of September, 1933; that attached to said copy of said petition was a notice purporting to be from the attorneys for the debtor, to the effect that on Tuesday, September 26, 1933, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel could be heard, said attorneys would present a petition, substantially in the form attached to said notice, to the Honorable James H. Wilkerson, District Judge, in the court room usually occupied by said judge in Chicago; that except as above set forth, the said Trust Company has received no notice of the said petition and the proposed hearing thereon.

3. That this affidavit is made in connection with and in support of the appearance of the said Trust Company herein specially and solely for the purpose of contesting and objecting to the jurisdiction of this Court over the person of said Company and for no other purpose.

JAMES P. CAREY, JR.

Subscribed and sworn to before me this 26th day of September, A. D. 1933.

D. J. WARD,
Notary Public.

(Seal)

There was offered and received in evidence in behalf of the special appearance of Mississippi Valley Trust Company, without objection, an affidavit of MILTON R. STAHL, which is in words and figures as follows, to-wit:

MILTON R. STAHL, being duly sworn states upon his oath, that he is a Vice President of the Mississippi Valley Trust Company, which has filed herein its special appearance for the purpose of objecting to the jurisdiction of the Court over the person of the said Mississippi Valley Trust Company. Affiant states in support of said special appearance and objection to the jurisdiction of this Court over its person that the Mississippi Valley Trust Company is a corporation organized under the laws of the State of Missouri with its

principal office in the City of St. Louis, Missouri; that it has in its posssesion in the City of St. Louis, Missouri, the pledged securities mentioned in the debtor's petition herein; that it is not a party to this proceeding; that no process has been issued by this Court against it; that it has never been served herein, but that on or about the ..... day of September, 1933, it received through the mails a registered letter containing a copy of debtor's petition, together with a notice that said petition would be presented to this Court on September 26, 1933. Affiant further states that neither it nor the securities in its hands as pledgee are within the jurisdiction of the District Court of the United States for the Northern District of Illinois.

MILTON R. STAHL.

Subscribed and sworn to before me at the City of St. Louis, Missouri, this 24th day of October, 1933.

My Commission expires July 4th, 1936.

FRED W. TROGDON,
(Seal) *Notary Public, City of St. Louis, Mo.*

It was orally stipulated and agreed by counsel for the respective protective committees and the Debtor, all of whom were appearing in support of the aforementioned application for an injunction, that neither of the banks, trust companies nor the Reconstruction Finance Corporation by presenting oral argument or in filing briefs in opposition to the said application for an injunction should be considered to have waived their respective special and limited appearances.

On this 12th day of January, 1934, the foregoing statement having been presented to me, the same is hereby in all things allowed and approved, and the same is hereby ordered filed as a statement of the evidence to be included in the record on appeal in the above style and numbered cause as provided in Paragraph B of Equity Rule 75.

JAMES H. WILKERSON
District Judge.

And on, to wit, the 12th day of December, 1933, came The Chase National Bank of the City of New York by its attorneys and filed in the Clerk's office of said Court a certain Petition for Appeal in words and figures following, to wit:

* * (Caption) * *

PETITION FOR APPEAL.

To the Honorable James H. Wilkerson, Judge of the United States District Court for the Northern District of Illinois, Eastern Division:

Your petitioner, The Chase National Bank of the City of New York, which has appeared in the above entitled cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said bank in the matter of the petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by said bank, and not generally, and now appearing further for the sole purpose of presenting this petition, and not generally, prays that a separate appeal be granted from the injunctional order entered in the above entitled cause on November 22, 1933, restraining and enjoining The Chase National Bank of the City of New York from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory note of the Debtor or any part thereof, until further order of said Court, to the United States Circuit Court of Appeals for the Seventh Circuit, for the reasons specified in the assignment of errors which is filed herewith.

And your petitioner prays further that a citation may be granted, directed to the Debtor; to Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, trustees of all the property of the Debtor; to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Con-

vertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds, commanding them to appear before the said United States Circuit Court of Appeals for the Seventh Circuit at Chicago, Illinois, to do and receive that which may appertain to justice to be done in the premises; and that a transcript of the record and evidence in said proceedings, duly authenticated, may be transmitted to the said United States Circuit Court of Appeals for the Seventh Circuit.

And your petitioner prays that the Court fix the amount of the bond which petitioner shall give on said appeal.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
By RUSHMORE, BISBEE & STERN,
Attorneys for The Chase National Bank of the City of New York, appearing specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said bank, and not generally, and of presenting the above petition for appeal, and not generally.

December 12, 1933.

And on, to wit, the 12th day of December, 1933, came The Chase National Bank of the City of New York by its attorneys and filed in the Clerk's office of said Court a certain Assignment of Errors in words and figures following, to wit:

* * (Caption) * *

ASSIGNMENT OF ERRORS.

Comes now the Chase National Bank of the City of New York, having appeared in the above entitled cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said bank in the matter of the petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by said bank, and not generally, and now further appearing specially and solely for the purpose of taking a separate appeal from the injunctional order entered herein on November 22, 1933, by the Honorable James H. Wilkerson, Judge of the United States District Court for the Northern District of Illinois, restraining and enjoining The Chase National Bank of the City of New York from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory note of the Debtor, or any part thereof, until further order of said Court, and not generally, and files the following assignment of errors upon which it will rely in the prosecution of its appeal:

1. The Court erred in entering the injunctional order of November 22, 1933, purporting to restrain and enjoin The Chase National Bank of the City of New York from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory note of the Debtor, or any part thereof, until further order of said Court.

2. The Court erred in holding that it had jurisdiction over the person of The Chase National Bank of the City of New York.

3. The Court erred in holding that it possessed jurisdiction to enter said injunctional order of November 22, 1933, purporting to restrain and enjoin The Chase National Bank of the City of New York from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory note of the Debtor, or any part thereof, until further order of said Court.

4. The Court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the petition of the Debtor for Order No. 15 are true and accurate.

5. The Court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the affidavit of Dwight S. Beebe, verified September 25, 1933, and filed herein on September 26, 1933, are true and accurate.

6. The Court erred in finding that a sale of the collateral held by The Chase National Bank of the City of New York, or any part thereof, would hinder, impede, obstruct, delay and in effect prevent the orderly preparation and consummation of the plan of reorganization of the trust estate.

7. The Court erred in finding that it is necessary for the enforcement of the provisions of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy that The Chase National Bank of the City of New York be enjoined and restrained from selling or disposing of the collateral held by it as security for the promissory note of the Debtor, or any part thereof, pending the preparation and consummation of a plan of reorganization.

8. The Court erred in not requiring, as a condition precedent to the entry of said injunctional order, a bond conditioned upon the payment of such costs and damages as may be incurred by The Chase National Bank of the City of New York if found to have been wrongfully enjoined or restrained by said order.

9. The Court erred in not holding that Section 77 of Chapter VIII of the Bankruptcy Act, as amended, enacted March 3, 1933, if construed so as to authorize the issuance of the injunctional order from which this appeal is prayed, is unconstitutional and void as a taking of property of The Chase National Bank of the City of New York without due process of law in violation of the Constitution of the United States, and more particularly the Fifth Amendment thereto.

10. Section 77 of Chapter VIII of the Bankruptcy Act, as amended, as construed by the court below, and the issuance of the injunctional order appealed from, deprives The Chase National Bank of the City of New York of its property without due process of law, in violation of the Constitution of the United States, and more particularly the Fifth Amendment thereto.

Wherefore, appellant prays that the injunctional order entered herein on November 22, 1933, be reversed, and that said injunction be dissolved; and that such other and further re-

lief may be given this appellant as to this Honorable Court may seem just and proper.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
by RUSHMORE, BISBEE & STERN,
Attorneys for The Chase National Bank of the City of New York, appearing specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said bank, and not generally, and of presenting the above petition for appeal, and not generally.

Dated, December 12, 1933.

And afterwards, to wit, on the 12th day of December, 1933, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

* * (Caption) * *

ORDER ALLOWING APPEAL.

The petition of The Chase National Bank of the City of New York, appearing herein specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said bank in the matter of the petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by said bank, and not generally, and of taking a separate appeal from the said injunctional order of November 22, 1933, and not generally, is hereby granted, and the appeal to the United States Circuit Court of Appeals for the Seventh Circuit is allowed upon the said The Chase National Bank of the City of New York giving bond as required by law in the sum of two hundred and fifty Dollars ($250).

Enter:

JAMES H. WILKERSON
Judge.

December 12th, 1933.

And on, to wit, the 12th day of December, 1933, came The Chase National Bank of the City of New York by its attorneys and filed in the Clerk's office of said Court a certain Bond on Appeal in words and figures following, to wit:

* * (Caption) * *

BOND ON APPEAL OF THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK.

Know All Men by These Presents, That we, The Chase National Bank of the City of New York, an association organized under the Banking Laws of the United States, as principal, and American Surety Company of New York, as surety, are held and firmly bound unto The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the property of said Debtor, Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the General Mortgage 4% Gold Bonds of the Debtor, Dwight S. Beebe, Merrel B. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds, Series A, of the Debtor, Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Thirty-Year 4½% Convertible Gold Bonds of the Debtor, Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids and Northern Railway Company Consolidated First Mortgage 5% Bonds, James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James R. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana Railroad Company First Mortgage 4½% Bonds, (said Debtor, Trustees, and members of Protective Committees being hereinafter referred to as "appellees"), in the sum of Two Hundred Fifty Dollars ($250.00), to be paid to the said appellees, their heirs, executors, administrators, successors or assigns, for the payment of which, well and truly to be made, we bind ourselves, our

and each of our heirs, representatives, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 7th day of December, 1933.

Whereas, lately at a hearing in the United States District Court for the Northern District of Illinois, Eastern Division, in a proceeding in bankruptcy pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, in the matter of The Chicago, Rock Island and Pacific Railway Company, Debtor, an injunctional order was made and entered on November 22, 1933, restraining and enjoining The Chase National Bank of the City of New York from converting, selling, or otherwise disposing of the collateral held by it as security for the promissory note of the Debtor, or any part thereof, until further order of the Court, and said The Chase National Bank of the City of New York, appearing in said cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court to make and enter said injunctional order, and not generally, and further appearing specially and solely for the purpose of taking a separate appeal from said injunctional order of November 22, 1933, and not generally, has taken a separate appeal from said injunctional order to the United States Circuit Court of Appeals for the Seventh Circuit.

Now, Therefore, the condition of the above obligation is such, that if said The Chase National Bank of the City of New York shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation shall be void, otherwise to remain in full force and effect.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,

By W. H. MOORHEAD,
Vice President.

(Seal)

AMERICAN SURETY COMPANY OF NEW YORK,

B. H. Davenport,
Resident Vice President.

(Seal)

778466-D

Attest:

M. Berg,
Resident Assistant Secretary.

Approved:

JAMES H. WILKERSON,
Judge.

State of New York, } ss.
County of New York, }

No. 7626, Series E

I, Daniel E. Finn, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county, Do Hereby Certify, That said Court is a Court of Record, having by law a seal; that Thos. J. Flanagan whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument was at the time of taking the same a Notary Public acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the County of New York a certified copy of his appointment and qualification as Notary Public for the County of Kings with his autograph signature; that as such Notary Public he was duly authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further, that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 7 day of Dec. 1933.

DANIEL E. FINN,
Clerk.

State of New York, } ss.
County of New York, }

On this 7th day of December, 1933, before me personally appeared W. H. Moorhead, to me known, who being by me duly sworn, did depose and say: that he resides in Borough of Brooklyn, City of New York; that he is a Vice-President of The Chase National Bank of the City of New York, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was affixed by order of the Board of Directors

of said corporation, and that he signed his name thereto by like order.

Thos. J. Flanagan,
Notary Public, Kings Co.

(Seal)

Kings Co. Clks. No. 116, Reg. No. 4112.
Certificate filed in New York County.
N. Y. Co. Clks. No. 264, Reg. No. 4F140.
Commission expires March 30, 1934.

State of New York, }
County of New York, } ss.

On this day of December, 1933, before me personally came known to me to be the Resident Vice-President of the American Surety Company of New York, the corporation described in and which executed the annexed bond of The Chase National Bank of the City of New York, as surety thereon, who being by me duly sworn, deposes and says that he resides in and that he is the Resident Vice-President of the American Surety Company of New York, and knows the corporate seal thereof; that said Company is duly and legally incorporated under the laws of the State of New York; that said Company has complied with the provisions of the Act of Congress of August 13, 1894, and as amended March 24, 1910, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of The Chase National Bank of the City of New York is the corporate seal of the said American Surety Company of New York and was thereto affixed by order and authority of the Board of Trustees of said Company; and that he signed his name thereto by like order and authority as Resident Vice-President of said Company; and that he is acquainted with , and knows him to be the Resident Assistant Secretary of said Company; and that the signature of said subscribed to said bond is in the genuine handwriting of said and was thereto subscribed by order and authority of said Board of Trustees, and in the presence of said deponent; and that the assets of said Company, unincumbered and liable to execution, exceeds its claim, debts, and liabilities, of every nature whatsoever, by more than the sum of Five Million Dollars ($5,000,000.00).

.....

Sworn to, acknowledged before me and subscribed in my presence this day of December, 1933.

And on, to wit, the 12th day of December, 1933, came the Continental Illinois National Bank and Trust Company of Chicago by its attorneys and filed in the Clerk's office of said Court a certain Petition for Appeal in words and figures following, to wit:

(Caption)

PETITION FOR APPEAL.

To the Honorable James H. Wilkerson, Judge of the United States District Court for the Northern District of Illinois, Eastern Division:

Your petitioner, Continental Illinois National Bank and Trust Company of Chicago, a corporation, which has appeared in the above entitled cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said corporation in the matter of the petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by said corporation, and not generally, and now appearing further for the sole purpose of presenting this petition, and not generally, prays that a separate appeal be granted from the injunctional order entered in the above entitled cause on November 22, 1933, restraining and enjoining the Continental Illinois National Bank and Trust Company of Chicago from converting, selling or otherwise disposing of collateral held by it as security for the promissory notes of the Debtor, or any part thereof, until the further order of said Court, to the United States Circuit Court of Appeals for the Seventh Circuit, for the reasons specified in the assignment of errors which is filed herewith.

And your petitioner prays further that a citation may be granted, directed to the Debtor; to Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor; to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Pro-

tective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds, commanding them to appear before the said United States Circuit Court of Appeals for the Seventh Circuit at Chicago, Illinois, to do and receive that which may appertain to justice to be done in the premises; and that a transcript of the record and evidence in said proceedings, duly authenticated, may be transmitted to the said United States Circuit Court of Appeals for the Seventh Circuit.

And your petitioner prays that the Court fix the amount of the bond which petitioner shall give on said appeal.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
By ISAAC H. MAYER,
DAVID F. ROSENTHAL and
HERBERT A. FRIEDLICH,
Attorneys for Continental Illinois National Bank and Trust Company of Chicago, a corporation, appearing specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said corporation, and not generally, and of presenting the above petition for appeal, and not generally.

ISAAC H. MAYER,
DAVID F. ROSENTHAL,
HERBERT A. FRIEDLICH,
Solicitors and of Counsel.

And on, to wit, the 12th day of December, 1933, came The Continental Illinois National Bank and Trust Company of Chicago by its attorneys and filed in the Clerk's office of said Court a certain Assignment of Errors in words and figures following, to wit:

* * (Caption) * *

ASSIGNMENT OF ERRORS.

Comes Now The Continental Illinois National Bank and Trust Company of Chicago, having appeared in the above entitled cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said bank in the matter of the petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by said bank, and not generally, and now further appearing specially and solely for the purpose of taking a separate appeal from the injunctional order entered herein on November 22, 1933, by the Honorable James H. Wilkerson, Judge of the United States District Court for the Northern District of Illinois, restraining and enjoining the Continental Illinois National Bank and Trust Company of Chicago from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory notes of the Debtor, or any part thereof, until further order of said Court, and not generally, and files the following assignment of errors upon which it will rely in the prosecution of its appeal;

1. The Court erred in entering the injunctional order of November 22, 1933, purporting to restrain and enjoin the Continental Illinois National Bank and Trust Company of Chicago from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory notes of the Debtor, or any part thereof, until further order of said Court.

2. The Court erred in holding that it had jurisdiction over the person of the Continental Illinois National Bank and Trust Company of Chicago.

3. The Court erred in holding that it possessed jurisdiction to enter said injunctional order of November 22, 1933, purporting to restrain and enjoin the Continental Illinois National Bank and Trust Company of Chicago from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory notes of the Debtor, or any part thereof, until further order of said Court.

4. The Court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the petition of the Debtor for Order No. 15 are true and accurate.

5. The Court erred in finding in its said injunctional order

of November 22, 1933, that the facts set forth in the affidavit of Dwight S. Beebe, verified September 25, 1933, and filed herein on September 26, 1933, are true and accurate.

6. The Court erred in finding that a sale of the collateral held by the Continental Illinois National Bank and Trust Company of Chicago, or any part thereof, would hinder, impede, obstruct, delay and in effect prevent the orderly preparation and consummation of the plan of reorganization of the trust estate.

7. The Court erred in finding that it is necessary for the enforcement of the provisions of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy that the Continental Illinois National Bank and Trust Company of Chicago be enjoined and restrained from selling or disposing of the collateral held by it as security for the promissory notes of the Debtor, or any part thereof, pending the preparation and consummation of a plan of reorganization.

8. The Court erred in not requiring, as a condition precedent to the entry of said injunctional order, a bond conditioned upon the payment of such costs and damages as may be incurred by the Continental Illinois National Bank and Trust Company of Chicago if found to have been wrongfully enjoined or restrained by said order.

9. The court erred in not holding that a construction of Section 77 of Chapter 8 of the Acts of Congress passed March 3, 1933, relating to Bankruptcy, which would authorize the issuance of the injunctional order from which this appeal is prayed, would violate the Constitution of the United States, and more particularly the Fifth Amendment thereto, as depriving the Continental Illinois National Bank and Trust Company of Chicago of its property without due process of law.

10. Section 77 of Chapter 8 of the Bankruptcy Laws of the United States, as construed by the court below, and its issuance of the injunctional order appealed from based upon said construction, deprives the Continental Illinois National Bank and Trust Company of Chicago of its property without due process of law, in violation of the Constitution of the United States, and more particularly of the Fifth Amendment thereto.

Wherefore, appellant prays that the injunctional order entered herein on November 22, 1933, be reversed, and that said injunction be dissolved; and that such other and further re-

lief may be given this appellant as to this Honorable Court may seem just and proper.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
By ISAAC H. MAYER,
DAVID F. ROSENTHAL,
HERBERT A. FRIEDLICH,
Attorneys for the Continental Illinois National Bank and Trust Company of Chicago, appearing specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said bank, and not generally and of presenting the above petition for appeal, and not generally.

ISAAC H. MAYER,
DAVID F. ROSENTHAL,
HERBERT A. FRIEDLICH,
Solicitors and of Counsel.

And afterwards, to wit, on the 12th day of December, 1933, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge appears the following entry, to wit:

* * (Caption) * *

ORDER ALLOWING APPEAL.

The petition of the Continental Illinois National Bank and Trust Company of Chicago, a corporation, appearing specially and solely for the purpose of denying and objecting to the jurisdiction of the court over said corporation in the matter of the petition of the debtor herein for Order No. 15 for an injunction against the sale of collateral held by said corporation, and not generally, and of taking a separate appeal from the said injunctional order of this court entered November 22, 1933, and not generally, is hereby granted; and an appeal is hereby allowed to the United States Circuit Court of Appeals for the Seventh Circuit from the injunctional or-

der entered by this court November 22, 1933 restraining and enjoining said Continental Illinois National Bank and Trust Company of Chicago from converting, selling or otherwise disposing of the collateral held by it as security for promissory notes of the debtor herein, upon the said Continental Illinois National Bank and Trust Company of Chicago giving bond as required by law in the sum of two hundred fifty Dollars ($250).

Enter:

JAMES H. WILKERSON,
Judge.

December 12, 1933.

And on, to wit, the 12th day of December, 1933, came The Continental Illinois National Bank and Trust Company of Chicago by its attorneys and filed in the Clerk's office of said Court a certain Bond on Appeal in words and figures following, to wit:

* * (Caption) * *

BOND ON APPEAL OF THE CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO.

Know All Men By These Presents, That we, Continental Illinois National Bank and Trust Company, an association organized under the Banking Laws of the United States, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the property of said Debtor, Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the General Mortgage 4% Gold Bonds of the Debtor, Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds, Series A, of the Debtor, Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, consti-

tuting a Protective Committee for the Thirty-Year 4½% Convertible Gold Bonds of the Debtor, Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids and Northern Railway Company Consolidated First Mortgage 5% Bonds, James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James R. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana Railroad Company First Mortgage 4½% Bonds, (said Debtor, Trustees, and members of Protective Committees being hereinafter referred to as "appellees"), in the sum of Two Hundred Fifty Dollars ($250.00), to be paid to the said appellees, their heirs, executors, administrators, successors or assigns, for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, representatives, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 12th day of December, 1933.

Whereas, lately at a hearing in the United States District Court for the Northern District of Illinois, Eastern Division, in a proceeding in bankruptcy pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, in the matter of The Chicago, Rock Island and Pacific Railway Company, Debtor, an injunctional order was made and entered on November 22, 1933, restraining and enjoining Continental Illinois National Bank and Trust Company of Chicago from converting, selling, or otherwise disposing of the collateral held by it as security for the promissory notes of the Debtor, or any part thereof, until further order of the Court, and said Continental Illinois National Bank and Trust Company of Chicago, appearing in said cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court to make and enter said injunctional order, and not generally, has taken a separate appeal from said injunctional order to the United States Circuit Court of Appeals for the Seventh Circuit.

Now, Therefore, the condition of the above obligation is such, that if said Continental Illinois National Bank and Trust Company of Chicago shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make good its

plea, then the above obligation shall be void, otherwise to remain in full force and effect.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
By R. C. HYATT,
Vice President.

(Corporate Seal)

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By R. G. STANTON,
Its Agent & Attorney-in-fact.

(Corporate Seal)

Approved:
JAMES H. WILKERSON,
Judge.

And on, to wit, the 12th day of December, 1933, came the Harris Trust and Savings Bank, by its attorneys and filed in the Clerk's office of said Court a certain Petition for Appeal in words and figures following, to wit:

* * (Caption) * *

PETITION FOR APPEAL.

To the Honorable James H. Wilkerson, Judge of the United States District Court for the Northern District of Illinois, Eastern Division:

Your petitioner, Harris Trust and Savings Bank, a corporation, which has appeared in the above entitled cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said corporation in the matter of the petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by said corporation, and not generally, and now appearing further for the sole purpose of presenting this petition, and not generally, prays that a separate appeal be granted from the injunctional order entered in the above entitled cause on November 22, 1933, restraining and enjoining Harris Trust and Savings Bank, from converting, selling or otherwise disposing of collateral held by it as security for the promissory notes of the Debtor, or any part thereof, until the further order of said Court, to the United States Circuit Court of Appeals for the Seventh Circuit, for the reasons specified in the assignment of errors which is filed herewith.

And your petitioner prays further that a citation may be granted, directed to the Debtor; to Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor; to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds, commanding them to appear before the said United States Circuit Court of Appeals for the Seventh Circuit at Chicago, Illinois, to do and receive that which may appertain to justice to be done in the premises; and that a transcript of the record and evidence in said proceedings, duly authenticated, may be transmitted to the said United States Circuit Court of Appeals for the Seventh Circuit.

And your petitioner prays that the Court fix the amount of the bond which petitioner shall give on said appeal.

HARRIS TRUST AND SAVINGS BANK

By PERRY M. CHADWICK

Attorney for Harris Trust and Savings Bank, a corporation, appearing specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said corporation, and not generally, and of presenting the above petition for appeal, and not generally.

And on, to wit, the 12th day of December, 1933 came the Harris Trust and Savings Bank by its attorneys and filed in the Clerk's office of said Court a certain Assignment of Errors in words and figures following, to wit:

* * (Caption) * *

ASSIGNMENT OF ERRORS.

Comes now Harris Trust and Savings Bank (hereinafter referred to as "Bank"), having appeared in the above entitled cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said Bank in the matter of the petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by said Bank, and not generally, and now further appearing specially and solely for the purpose of taking a separate appeal from the injunctional order entered herein on November 22, 1933, by the Honorable James H. Wilkerson, Judge of the United States District Court for the Northern District of Illinois, restraining and enjoining the Harris Trust and Savings Bank from converting, selling, or otherwise disposing of the collateral held by said Bank as security for the promissory note of the Debtor, or any part thereof, until further order of said Court, and not generally, and files the following assignment of errors upon which it will rely in the prosecution of its appeal:

1. The Court erred in entering the injunctional order of November 22, 1933, purporting to restrain and enjoin the Harris Trust and Savings Bank from converting, selling, or otherwise disposing of the collateral held by said Bank as security for the promissory note of the Debtor, or any part thereof, until further order of said Court.

2. The Court erred in holding that it had jurisdiction over the person of the Harris Trust and Savings Bank.

3. The Court erred in holding that it possessed jurisdiction to enter said injunctional order of November 22, 1933, purporting to restrain and enjoin the Harris Trust and Savings Bank from converting, selling, or otherwise disposing of the collateral held by said Bank as security for the promissory note of the Debtor, or any part thereof, until further order of said Court.

4. The Court erred in finding in its said injunctional or-

der of November 22, 1933, that the facts set forth in the petition of the Debtor for Order No. 15 are true and accurate.

5. The Court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the affidavit of Dwight S. Beebe, verified September 25, 1933, and filed herein on September 26, 1933, are true and accurate.

6. The Court erred in finding that a sale of the collateral held by the Harris Trust and Savings Bank, or any part thereof, would hinder, impede, obstruct, delay and in effect prevent the orderly preparation and consummation of the plan of reorganization of the trust estate.

7. The Court erred in finding that it is necessary for the enforcement of the provisions of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy that the Harris Trust and Savings Bank be enjoined and restrained from selling or disposing of the collateral held by it as security for the promissory note of the Debtor, or any part thereof, pending the preparation and consummation of a plan of reorganization.

8. The Court erred in not requiring, as a condition precedent to the entry of said injunctional order, a bond conditioned upon the payment of such costs and damages as may be incurred by the Harris Trust and Savings Bank if found to have been wrongfully enjoined or restrained by said order.

9. The Court erred in not holding that a construction of Section 77 of Chapter 8 of the Acts of Congress passed March 3, 1933, relating to Bankruptcy, which would authorize the issuance of the injunctional order from which this appeal is prayed, would violate the Constitution of the United States, and more particularly the Fifth Amendment thereto, as depriving the Harris Trust and Savings Bank of its property without due process of law.

10. Section 77 of Chapter 8 of the Bankruptcy Laws of the United States, as construed by the court below, and its issuance of the injunctional order appealed from based upon said construction, deprives the Harris Trust and Savings Bank of its property without due process of law, in violation of the Constitution of the United States, and more particularly of the Fifth Amendment thereto.

Wherefore, appellant prays that the injunctional order entered herein on November 22, 1933, be reversed, and that said injunction be dissolved; and that such other and further re-

lief may be given this appellant as to this Honorable Court may seem just and proper.

HARRIS TRUST AND SAVINGS BANK,
By PERRY M. CHADWICK,
Attorney for Harris Trust and Savings Bank, appearing specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said bank, and not generally, and of presenting the above petition for appeal, and not generally.

Dated December 12, 1933.

And afterwards, to wit, on the 12th day of December, 1933, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

* * (Caption) * *

ORDER ALLOWING APPEAL.

The petition of Harris Trust and Savings Bank, a corporation, appearing specially and solely for the purpose of denying and objecting to the jurisdiction of the Court over said corporation in the matter of the petition of the debtor herein for Order No. 15 for an injunction against the sale of collateral held by said corporation, and not generally, and of taking a separate appeal from the said injunctional order of this Court entered November 22, 1933, and not generally, is hereby granted; and an appeal is hereby allowed to the United States Circuit Court of Appeals for the Seventh Circuit from the injunctional order entered by this Court November 22, 1933, restraining and enjoining said Harris Trust and Savings Bank from converting, selling or otherwise disposing of the collateral held by it as security for promissory notes of the debtor herein, upon the said Harris Trust and Savings Bank giving bond as required by law in the sum of two hundred and fifty Dollars.

Enter:

JAMES H. WILKERSON,
Judge.

December 12, 1933.

And on, to wit, the 12th day of December, 1933, came the Harris Trust and Savings Bank by its attorneys and filed in the Clerk's office of said Court a certain Bond on Appeal in words and figures following, to wit:

* * (Caption) * *

BOND ON APPEAL OF HARRIS TRUST AND SAVINGS BANK.

Know All Men by These Presents:

That we, Harris Trust and Savings Bank, a corporation organized under the Banking Laws of the State of Illinois, as principal, and Hartford Accident and Indemnity Company, as surety, are held and firmly bound unto The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the property of said Debtor, Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the General Mortgage 4% Gold Bonds of the Debtor, Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds, Series A, of the Debtor, Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Thirty-Year 4½% Convertible Gold Bonds of the Debtor, Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids and Northern Railway Company Consolidated First Mortgage 5% Bonds, James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James R. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana Railroad Company First Mortgage 4½% Bonds (said Debtor, Trustees, and members of Protective Committees being hereinafter referred to as "appellees"), in the sum of Two Hundred and Fifty Dollars ($250.00), to be paid to the said appellees, their heirs, executors, administrators, successors or assigns, for the payment

of which, well and truly to be made, we bind ourselves, our and each of our heirs, representatives, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 12 day of December, 1933.

Whereas, lately at a hearing in the United States District Court for the Northern District of Illinois, Eastern Division, in a proceeding in Bankruptcy pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, in the matter of The Chicago, Rock Island and Pacific Railway Company, Debtor, an injunctional order was made and entered on November 22, 1933, restraining and enjoining Harris Trust and Savings Bank from converting, selling, or otherwise disposing of the collateral held by it as security for the promissory notes of the Debtor, or any part thereof, until further order of the Court, and said Harris Trust and Savings Bank appearing in said cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court to make and enter said injunctional order, and not generally, has taken a separate appeal from said injunctional order to the United States Circuit Court of Appeals for the Seventh Circuit.

Now, Therefore, the condition of the above obligation is such, that if said Harris Trust and Savings Bank shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation shall be void, otherwise to remain in full force and effect.

HARRIS TRUST AND SAVINGS BANK,
By W. H. VANDERPLOEG,
Asst. Vice President.

(Seal)

Attest:
F. O. MANN,
Asst. Secretary.

HARTFORD ACCIDENT AND INDEMNITY COMPANY,
By FRANK J. SOUKUP,
Attorney-in-fact.

(Seal)

Its .....

Approved:
JAMES H. WILKERSON,
Judge.

And afterwards, to wit, on the 12th day of December, 1933, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

* * (Caption) * *

Tuesday, December 12, 1933.

Present: Honorable James H. Wilkerson, Judge of said Court.

This day come the petitioners, Chase National Bank of New York, Continental Illinois National Bank & Trust Company and the Harris Trust & Savings Bank by their solicitors and present herein their appeal bonds which bonds are approved and signed by the Court and ordered by the Court to be filed by the Clerk of this Court.

And on, to wit, the 12th day of December, 1933, came the Mississippi Valley Trust Company by its attorneys and filed in the Clerk's office of said Court a certain Petition for Appeal in words and figures following, to wit:

* * (Caption) * *

PETITION FOR APPEAL.

To the Honorable James H. Wilkerson, Judge of the United States District Court for the Northern District of Illinois, Eastern Division:

Your petitioner Mississippi Valley Trust Company, a corporation, which has appeared in the above entitled cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said corporation in the matter of the petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by said corpora-

tion, and not generally, and now appearing further for the sole purpose of presenting this petition, and not generally, prays that a separate appeal be granted from the injunctional order entered in the above entitled cause on November 22, 1933, restraining and enjoining the Mississippi Valley Trust Company from converting, selling or otherwise disposing of collateral held by it as security for the promissory notes of the Debtor, or any part thereof, until the further order of said Court, to the United States Circuit Court of Appeals for the Seventh Circuit, for the reasons specified in the assignment of errors which is filed herewith.

And your petitioner prays further that a citation may be granted, directed to the Debtor; to Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the debtor; Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds, commanding them to appear before the said United States Circuit Court of Appeals for the Seventh Circuit at Chicago, Illinois, to do and receive that which may appertain to justice to be done in the premises; and that a transcript of the record and evidence in said proceedings, duly authenticated, may be transmitted to the said United States Circuit Court of Appeals for the Seventh Circuit.

And your petitioner prays that the Court fix the amount of the bond which petitioner shall give on said appeal.

MISSISSIPPI VALLEY TRUST COMPANY,
By T. M. PIERCE,
MILTON R. STAHL and
S. MAYNER WALLACE,
Attorneys for Mississippi Valley Trust Company, a corporation, appearing specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said corporation, and not generally, and of presenting the above petition for appeal, and not generally.

T. M. PIERCE,
MILTON R. STAHL,
S. MAYNER WALLACE,
Solicitors and of Counsel.

And on, to wit, the 12th day of December, 1933, came the Mississippi Valley Trust Company by its attorneys and filed in the Clerk's office of said Court a certain Assignment of Errors in words and figures following, to wit:

* * (Caption) * *

ASSIGNMENT OF ERRORS.

Comes Now The Mississippi Valley Trust Company, (hereinafter sometimes referred to as "Bank") having appeared in the above entitled cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said bank in the matter of the petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by said bank, and not generally, and now further appearing specially and solely for the purpose of taking a separate appeal from the injunctional order entered herein on November 22, 1933, by the Honorable James H. Wilkerson, Judge of the United States District Court for the Northern District of Illinois, restraining and enjoining the Mississippi Valley Trust Company from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory note of the Debtor, or any part thereof, until further order of said Court, and not

generally, and files the following assignment of errors upon which it will rely in the prosecution of its appeal;

1. The Court erred in entering the injunctional order of November 22, 1933, purporting to restrain and enjoin the Mississippi Valley Trust Company from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory notes of the debtor, or any part thereof, until further order of said Court.

2. The Court erred in holding that it had jurisdiction over the person of the Mississippi Valley Trust Company.

3. The Court erred in holding that it possessed jurisdiction to enter said injunctional order of November 22, 1933, purporting to restrain and enjoin the Mississippi Valley Trust Company from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory notes of the Debtor, or any part thereof, until further order of said Court.

4. The Court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the petition of the Debtor for Order No. 15 are true and accurate.

5. The Court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the affidavit of Dwight S. Beebe, verified September 25, 1933, and filed herein on September 26, 1933, are true and accurate.

6. The Court erred in finding that a sale of the collateral held by the Mississippi Valley Trust Company, or any part thereof, would hinder, impede, obstruct, delay and in effect prevent the orderly preparation and consummation of the plan of reorganization of the trust estate.

7. The Court erred in finding that it is necessary for the enforcement of the provisions of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy that the Mississippi Valley Trust Company be enjoined and restrained from selling or disposing of the collateral held by it as security for the promissory notes of the Debtor, or any part thereof, pending the preparation and consummation of a plan of reorganization.

8. The Court erred in not requiring, as a condition precedent to the entry of said injunctional order, a bond conditioned upon the payment of such costs and damages as may be incurred by the Mississippi Valley Trust Company if found to have been wrongfully enjoined or restrained by said order.

9. The Court erred in not holding that a construction of Section 77 of Chapter 8 of the Acts of Congress passed

March 3, 1933, relating to Bankruptcy, which would authorize the issuance of the injunctional order from which this appeal is prayed, would violate the Constitution of the United States, and more particularly the Fifth Amendment thereto, as depriving the Mississippi Valley Trust Company of its property without due process of law.

10. Section 77 of Chapter 8 of the Bankruptcy Laws of the United States, as construed by the court below, and its issuance of the injunctional order appealed from based upon said construction, deprives the Mississippi Valley Trust Company of its property without due process of law, in violation of the Constitution of the United States, and more particularly of the Fifth Amendment thereto.

Wherefore, appellant prays that the injunctional order entered herein on November 22, 1933, be reversed, and that said injunction be dissolved; and that such other and further relief may be given this appellant as to this Honorable Court may seem just and proper.

MISSISSIPPI VALLEY TRUST COMPANY
By T. M. PIERCE,
MILTON R. STAHL
and
S. MAYNER WALLACE
Attorneys for the Mississippi Valley Trust Company, appearing specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said bank, and not generally, and of presenting the above petition for appeal, and not generally.

T. M. PIERCE
MILTON R. STAHL
S. MAYNER WALLACE
Solicitors and of Counsel.

And afterwards, to wit, on the 12th day of December, 1933, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

* * (Caption) * *

ORDER ALLOWING APPEAL.

The petition of the Mississippi Valley Trust Company, a corporation, appearing specially and solely for the purpose of denying and objecting to the jurisdiction of the court over said corporation in the matter of the petition of the debtor herein for Order No. 15 for an injunction against the sale of collateral held by said corporation, and not generally, and of taking a separate appeal from the said injunctional order of this court entered November 22, 1933, and not generally, is hereby granted; and an appeal is hereby allowed to the United States Circuit Court of Appeals for the Seventh Circuit from the injunctional order entered by this court November 22, 1933 restraining and enjoining said Mississippi Valley Trust Company from converting, selling or otherwise disposing of the collateral held by it as security for promissory notes of the debtor herein, upon the said Mississippi Valley Trust Company giving bond as required by law in the sum of two hundred and fifty Dollars ($250):

Enter:

JAMES H. WILKERSON,
Judge.

December 12, 1933.

And on, to wit, the 12th day of December, 1933, came the Mississippi Valley Trust Company by its attorneys and filed in the Clerk's office of said Court a certain Bond on Appeal in words and figures following, to wit:

* * (Caption) * *

BOND ON APPEAL OF THE MISSISSIPPI VALLEY TRUST COMPANY.

Know All Men By These Presents:

That we, Mississippi Valley Trust Company, a corporation organized under the Banking Laws of the State of Missouri, as principal, and Fidelity and Deposit Company of Maryland as surety, are held and firmly bound unto The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O.

Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the property of said Debtor, Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the General Mortgage 4% Gold Bonds of the Debtor, Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millheuser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds, Series A, of the Debtor, Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Thirty-Year 4½% Convertible Gold Bonds of the Debtor, Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids and Northern Railway Company Consolidated First Mortgage 5% Bonds, James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James R. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana Railroad Company First Mortgage 4½% Bonds, (said Debtor, Trustees, and members of Protective Committees being hereinafter referred to as "appellees"), in the sum of Two Hundred Fifty Dollars ($250.00), to be paid to the said appellees, their heirs, executors, administrators, successors or assigns, for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, representatives, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 12th day of December, 1933.

Whereas, lately at a hearing in the United States District Court for the Northern District of Illinois, Eastern Division, in a proceeding in bankruptcy pursuant to Section 77 of Chapter VIII of the Act of Congress relating to bankruptcy, in the matter of The Chicago, Rock Island and Pacific Railway Company, Debtor, an injunctional order was made and entered on November 22, 1933, restraining and enjoining Mississippi Valley Trust Company from converting, selling, or otherwise disposing of the collateral held by it as security for the promissory notes of the Debtor, or any part thereof, until further order of the Court, and said Mississippi Valley Trust Company appearing in said cause specially and solely

for the purpose of objecting to and contesting the jurisdiction of the Court to make and enter said injunctional order, and not generally, has taken a separate appeal from said injunctional order to the United States Circuit Court of Appeals for the Seventh Circuit.

Now, Therefore, the condition of the above obligation is such, that if said Mississippi Valley Trust Company shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation shall be void, otherwise to remain in full force and effect.

MISSISSIPPI VALLEY TRUST COMPANY,
By MILTON R. STAHL,
(Seal) *Vice President.*
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By R. G. STANTON,
(Seal) *Its Agent and Attorney-in-fact.*
Approved:
JAMES H. WILKERSON,
Judge.

And afterwards, to wit, on the 13th day of December, 1933, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge appears the following entry, to wit:

* * (Caption) * *

Wednesday, December 13, 1933.

Present: Honorable James H. Wilkerson, Judge of said Court.

This day comes the Mississippi Valley Trust Company by its solicitors and present herein its appeal bond which bond is approved and signed by the Court and ordered by the Court to be filed by the Clerk of this Court.

And on, to wit, the 12th day of December, 1933, came The New York Trust Company by its attorneys and filed in the Clerk's office of said Court a certain Petition for Appeal in words and figures following, to wit:

• • (Caption) • •

PETITION OF THE NEW YORK TRUST COMPANY FOR AN APPEAL.

To the Honorable James H. Wilkerson, Judge of the United States District Court for the Northern District of Illinois, Eastern Division:

Your petitioner, The New York Trust Company, a corporation organized and existing under the laws of New York, which has appeared in the above entitled cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said corporation in the matter of the petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by said corporation, and not generally, and now appearing further for the sole purpose of presenting this petition, and not generally, prays that a separate appeal be granted from the injunctional order entered in the above entitled cause on November 22, 1933, restraining and enjoining The New York Trust Company from converting, selling or otherwise disposing of collateral held by it as security for the promissory note of the Debtor, or any part thereof, until the further order of said Court, to the United States Circuit Court of Appeals for the Seventh Circuit, for the reasons specified in the assignment of errors which is filed herewith.

And your petitioner prays further that a citation may issue, directed to the Debtor; to Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor; to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for

the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds, commanding them to appear before the said United States Circuit Court of Appeals for the Seventh Circuit at Chicago, Illinois, to do and receive that which may appertain to justice to be done in the premises; and that a transcript of the record and evidence in said proceedings, duly authenticated, may be transmitted to the said United States Circuit Court of Appeals for the Seventh Circuit.

And your petitioner prays that the Court fix the amount of the bond which petitioner shall give on said appeal.

THE NEW YORK TRUST COMPANY
SIMS, STRANSKY & BREWER
By EDWIN W. SIMS
JAMES P. CAREY JR.
Attorneys for The New York Trust Company.

And on, to wit, the 12th day of December, 1933, came The New York Trust Company by its attorneys and filed in the Clerk's office of said Court a certain Assignment of Errors in words and figures following, to wit:

* * (Caption) * *

ASSIGNMENT OF ERRORS.

Comes Now the New York Trust Company, having appeared in the above entitled cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the court over said trust company in the matter of the petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by said trust company, and not generally, and now further appearing specially and solely for the purpose of taking a separate appeal from the injunctional order entered herein on November 22, 1933, by the Honorable James H. Wilkerson, Judge of the United States District Court for the Northern District of Illinois, restraining and enjoining The New York Trust Company from converting,

selling, or otherwise disposing of the collateral held by said trust company as security for the promissory note of the Debtor, or any part thereof, until further order of said court, and not generally and files the following assignment of errors upon which it will rely in the prosecution of its appeal;

1. The court erred in entering the injunctional order of November 22, 1933, purporting to restrain and enjoin the New York Trust Company from converting, selling, or otherwise disposing of the collateral held by said trust company as security for the promissory note of the Debtor, or any part thereof, until further order of said court.

2. The court erred in holding that it had jurisdiction over the person of The New York Trust Company.

3. The court erred in holding that it possessed jurisdiction to enter said injunctional order of November 22, 1933, purporting to restrain and enjoin The New York Trust Company from converting, selling, or otherwise disposing of the collateral held by said trust company as security for the promissory note of the Debtor, or any part thereof, until further order of said court.

4. The court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the petition of the Debtor for Order No. 15 are true and accurate.

5. The court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the affidavit of Dwight S. Beebe, verified September 25, 1933, and filed in the proceeding below on September 26, 1933, are true and accurate.

6. The court erred in finding that a sale of the collateral held by The New York Trust Company, or any part thereof, would hinder, impede, obstruct, delay and in effect prevent the orderly preparation and consummation of the plan of reorganization of the trust estate.

7. The court erred in finding that it is necessary for the enforcement of the provisions of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy that The New York Trust Company be enjoined and restrained from selling or disposing of the collateral held by it as security for the promissory note of the Debtor, or any part thereof, pending the preparation and consummation of a plan of reorganization.

8. The court erred in not requiring, as a condition precedent to the entry of said injunctional order, a bond conditioned upon the payment of such costs and damages as may

be incurred by The New York Trust Company if found to have been wrongfully enjoined or restrained by said order.

9. The court erred in not holding that a construction of Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, approved March 3, 1933, which would authorize the issuance of the injunctional order from which this appeal is prayed, would violate the Constitution of the United States, and more particularly the Fifth Amendment thereto, as depriving The New York Trust Company of its property without due process of law.

10. Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, approved March 3, 1933, as construed by the court below, and its issuance of the injunctional order appealed from based upon said construction, deprives The New York Trust Company of its property without due process of law, in violation of the Constitution of the United States, and more particularly of the Fifth Amendment thereto.

Wherefore, appellant prays that the injunctional order entered by the District Court for the Northern District of Illinois, on November 22, 1933, be reversed, and that said injunction be dissolved; and that such other and further relief may be given this appellant as to this Honorable Court may seem just and proper.

THE NEW YORK TRUST COMPANY,
Appellant.

By, SIMS STRANSKY & BREWER
EDWIN W. SIMS
JAMES P. CAREY JR.
Attorneys for The New York Trust Company.

Dated, December 12, 1933.

And afterwards, to wit, on the 12th day of December, 1933, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

* * (Caption) * *

ORDER ALLOWING APPEAL.

The petition of The New York Trust Company, a corporation, appearing herein specially and solely for the purpose of objecting to and contesting the jurisdiction of the court over said corporation in the matter of the petition of the debtor herein for Order No. 15 for an injunction against the sale of collateral held by said corporation, and not generally, and of taking a separate appeal from the said injunctional order of this court entered November 22, 1933, and not generally, is hereby granted; and an appeal is hereby allowed to the United States Circuit Court of Appeals for the Seventh Circuit from the injunctional order entered by this court November 22, 1933 restraining and enjoining the said The New York Trust Company from converting, selling or otherwise disposing of the collateral held by it as security for promissory note of the debtor herein, upon the said The New York Trust Company giving bond as required by law in the sum of two hundred and fifty Dollars ($250), to be approved by the court.

Enter:

JAMES H. WILKERSON,
Judge.

Dated, December 12, 1933.

And on, to wit, the 12th day of December, 1933, came the New York Trust Company by its attorneys and filed in the Clerk's office of said Court a certain Bond on Appeal in words and figures following, to wit:

* * (Caption) * *

BOND ON APPEAL OF THE NEW YORK TRUST COMPANY.

Know All Men By These Presents, That we, The New York Trust Company, a corporation organized under the laws of the State of New York, as principal, and American Employers' Insurance Company, a corporation organized and existing under the laws of the Commonwealth of Massachu-

setts, with home office at Boston, Massachusetts, as surety, are held and firmly bound unto The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the property of said Debtor, Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the General Mortgage 4% Gold Bonds of the Debtor, Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the First and Refunding Mortgage 4% Gold Bonds and secured 4½% Gold Bonds, Series A, of the Debtor, Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Thirty-Year 4½% Convertible Gold Bonds of the Debtor, Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids and Northern Railway Company Consolidated First Mortgage 5% Bonds, James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James R. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana Railroad Company First Mortgage 4½% Bonds, (said Debtor, Trustees, and members of Protective Committees being hereinafter referred to as "appellees"), in the sum of Two Hundred Fifty Dollars ($250), to be paid to the said appellees, their heirs, executors, administrators, successors or assigns, for the payment of which, well and truly to be made, we bind ourselves, our and each of our representatives, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 9th day of December, 1933.

Whereas, lately at a hearing in the United States District Court for the Northern District of Illinois, Eastern Division, in a proceeding in bankruptcy pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, in the matter of The Chicago, Rock Island and Pacific Railway Company, Debtor, an injunctional order was made and entered on November 22, 1933, restraining and enjoining The New York Trust Company from converting, selling, or otherwise disposing of the collateral held by it as security for the promissory note of the Debtor, or any part thereof, until

further order of the Court, and said The New York Trust Company appearing in said cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court to make and enter said injunctional order, and not generally, and further appearing specially and solely for the purpose of taking a separate appeal from said injunctional order of November 22, 1933, and not generally, has taken a separate appeal from said injunctional order to the United States Circuit Court of Appeals for the Seventh Circuit.

Now, Therefore, the condition of the above obligation is such, that if said The New York Trust Company shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation shall be void, otherwise to remain in full force and effect.

THE NEW YORK TRUST COMPANY,
By J. MURRAY MITCHELL,
Vice President.

(Seal)
Attest:
M. LAMAR,
Assistant Secretary.

AMERICAN EMPLOYERS' INSURANCE COMPANY,
By ELMER C. ANDERSON,
Attorney-in-fact.

(Seal)
Approved:
JAMES H. WILKERSON,
Judge.

State of New York, } ss.
County of New York. }

On this 9 day of December, 1933, before me personally appeared J. Murray Mitchell, to me known, who being by me duly sworn, did depose and say: that he resides in N. Y. City; that he is a Vice President of The New York Trust Company, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Sworn to before me this 9 day of December, 1933.
C. Roy Merritt
(Notarial Seal) *Notary Public, Westchester County,*
Cert. Filed in N. Y. Co. No. 1082, Reg No. 4M667,
Commission Expires March 30, 1934.

State of Illinois }
County of Cook } ss.

On this 9th day of December 1933 before me, a Notary Public, within and for said County and State, personally appeared Elmer C. Anderson, to me personally known, who being duly sworn, upon oath did say that he is Attorney-in-fact of and for the American Employers' Insurance Company, a corporation of Boston, Mass., created, organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts; that the Corporate seal affixed to the foregoing within instrument is the seal of the said Company; that the seal was affixed and the said instrument was executed by authority of its Board of Directors; and the said Elmer C. Anderson, did acknowledge that he executed the said instrument as the free act and deed of said Company.

BERNICE M. ZELINN,
(Notarial Seal) *Notary Public, Cook County.*

My commission expires 10-25-36.

And afterwards, to wit, on the 12th day of December, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge appears the following entry, to wit:

* * (Caption) * *

Tuesday, December 12, 1933.

Present: Honorable James H. Wilkerson, Judge of said Court.

This day comes the New York Trust Company by its solicitors and present herein its appeal bond which bond is approved and signed by the Court and ordered by the Court to be filed by the Clerk of this Court.

And on, to wit, the 12th day of December, 1933, came The Reconstruction Finance Corporation by its attorneys and filed in the Clerk's office of said Court a certain Petition for Appeal in words and figures following, to wit:

* * (Caption) * *

PETITION FOR APPEAL.

To the Honorable James H. Wilkerson, Judge of the United States District Court for the Northern District of Illinois, Eastern Division:

Your petitioner, Reconstruction Finance Corporation, a corporation, which has appeared in the above entitled cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said corporation in the matter of the petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by said corporation, and not generally, and now appearing further for the sole purpose of presenting this petition, and not generally, prays that a separate appeal be granted from the injunctional order entered in the above entitled cause on November 22, 1933, restraining and enjoining the Reconstruction Finance Corporation from converting, selling or otherwise disposing of collateral held by it as security for the promissory notes of the Debtor, or any part thereof, until the further order of said Court, to the United States Circuit Court of Appeals for the Seventh Circuit, for the reasons specified in the assignment of errors which is filed herewith.

And your petitioner prays further that a citation may be granted, directed to the Debtor; to Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor; to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frenderick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and

to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds, commanding them to appear before the said United States Circuit Court of Appeals for the Seventh Circuit at Chicago, Illinois, to do and receive that which may appertain to justice to be done in the premises; and that a transcript of the record and evidence in said proceedings, duly authenticated, may be transmitted to the said United States Circuit Court of Appeals for the Seventh Circuit.

And your petitioner prays that the Court fix the amount of the bond which petitioner shall give on said appeal.

RECONSTRUCTION FINANCE CORPORATION,
By HOPKINS, STARR & GODMAN & C. M. CLAY,
Attorneys for Reconstruction Finance Corporation, a corporation, appearing specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said corporation, and not generally, and of presenting the above petition for appeal, and not generally.

And on, to wit, the 12th day of December, 1933, came the Reconstruction Finance Corporation by its attorneys and filed in the Clerk's office of said Court a certain Assignment of Errors in words and figures following, to wit:

* * (Caption) * *

ASSIGNMENTS OF ERROR.

Comes Now Reconstruction Finance Corporation, a corporation, having appeared in the above entitled cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said corporation in the matter of the petition of the Debtor for Order No. 15 for an injunction against the sale of certain collateral held by said corporation, and not generally, and now further appearing specially and solely for the purpose of taking a separate appeal from the injunctional order entered herein on November 22, 1933, by the Honorable James H. Wilkerson, Judge of the

United States District Court for the Northern District of Illinois, restraining and enjoining Reconstruction Finance Corporation from converting, selling or otherwise disposing of the collateral held by said corporation as security for certain promissory notes of the Debtor, or any part thereof, until further order of said Court, and not Generally, and files the following assignments of error upon which it will rely in the prosecution of its appeal:

1. The Court erred in entering the injunctional order of November 22, 1933, purporting to restrain and enjoin Reconstruction Finance Corporation from converting, selling or otherwise disposing of the collateral held by said corporation as security for the promissory notes of the Debtor, or any part thereof, until further order of said Court.

2. The Court erred in holding that it had jurisdiction over the person of the Reconstruction Finance Corporation.

3. The Court erred in holding that it had jurisdiction to enter the injunctional order of November 22, 1933, purporting to restrain and enjoin Reconstruction Finance Corporation from converting, selling or otherwise disposing of the collateral held by said corporation as security for the promissory notes of the Debtor, or any part thereof, until further order of said Court.

4. The Court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the petition of the Debtor for Order No. 15 are true and accurate.

5. The Court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the affidavit of Dwight S. Beebe, verified September 25, 1933, and filed herein September 26, 1933, are true and accurate.

6. The Court erred in considering or predicating its injunctional order of November 22, 1933, upon the affidavit of Dwight S. Beebe, verified September 25, 1933, and filed herein on September 26, 1933, and upon the facts set forth therein.

7. The Court erred in finding that a sale of the collateral held by Reconstruction Finance Corporation, or any part thereof, would hinder, impede, obstruct, delay, and in effect prevent the orderly preparation and consummation of the plan of reorganization of the trust estate.

8. The Court erred in finding that it is necessary for the enforcement of the provisions of section 77 of chapter VIII of the Acts of Congress relating to bankruptcy that Reconstruction Finance Corporation be enjoined and restrained from selling and disposing of the collateral held by it as

security for the promissory notes of the Debtor, or any part thereof, pending the preparation and consummation of a plan of reorganization.

9. The Court erred in not requiring, as a condition precedent to the entry of said injunctional order, a bond conditioned upon the payment of such costs and damages as may be incurred by Reconstruction Finance Corporation if found to have been wrongfully enjoined or restrained by said order.

10. The Court erred in finding that a sale of the collateral held by Reconstruction Finance Corporation as security for the promissory notes of the Debtor, or any part thereof, would be inconsistent with the purposes of section 77 of chapter VIII of the Acts of Congress relating to bankruptcy.

Wherefore, appellant prays that the injunctional order entered herein on November 22, 1933, be reversed, and that said injunction be dissolved; and that such other and further relief may be given this appellant as to this Honorable Court may seem just and proper.

RECONSTRUCTION FINANCE CORPORATION,
By HOPKINS, STARR & GODMAN and
C. M. CLAY,
Attorneys for Reconstruction Finance Corporation, appearing specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said corporation, and not generally, and of presenting the above petition for appeal, and not generally.

Dated December 12, 1933.

And afterwards, to wit, on the 12th day of December, 1933, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge appears the following entry, to wit:

* * (Caption) * *

ORDER ALLOWING APPEAL.

The petition of the Reconstruction Finance Corporation, a corporation, appearing specially and solely for the purpose of denying and objecting to the jurisdiction of the court over said corporation in the matter of the petition of the debtor herein for Order No. 15 for an injunction against the sale of collateral held by said corporation, and not generally, and of taking a separate appeal from the said injunctional order of this court entered November 22, 1933, and not generally, is hereby granted; and an appeal is hereby allowed to the United States Circuit Court of Appeals for the Seventh Circuit from the injunctional order entered by this court November 22, 1933 restraining and enjoining said Reconstruction Finance Corporation from converting, selling or otherwise disposing of the collateral held by it as security for promissory notes of the debtor herein, upon the said Reconstruction Finance Corporation giving bond as required by law in the sum of two hundred and fifty Dollars ($250).

Enter:

JAMES H. WILKERSON,
Judge.

December 12, 1933.

And on, to wit, the 12th day of December, 1933, came the Reconstruction Finance Corporation by its attorneys and filed in the Clerk's office of said Court a certain Bond on Appeal in words and figures following, to wit:

* * (Caption) * *

BOND ON APPEAL OF RECONSTRUCTION FINANCE CORPORATION.

Know All Men By These Presents, That we, Reconstruction Finance Corporation, a corporation organized and existing under and pursuant to the laws of the United States of America, as principal, and The Fidelity and Casualty Company of New York, a New York Corporation, as surety, are held and firmly bound unto The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James

E. Gorman and Joseph B. Fleming, Trustees of the property of said Debtor, Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the General Mortgage 4% Gold Bonds of the Debtor, Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds, Series A, of the Debtor, Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Thirty-Year 4½% Convertible Gold Bonds of the Debtor, Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids and Northern Railway Company Consolidated First Mortgage 5% Bonds, James G. Blaine, Frank M. Gordon, William V. Griffin, R. C. Page and James R. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana Railroad Company First Mortgage 4½% Bonds, (said Debtor, Trustees, and members of Protective Committees being hereinafter referred to as "appellees"), in the sum of Two Hundred Fifty Dollars ($250.00), to be paid to the said appellees, their heirs, executors, administrators, successors or assigns, for the payment of which, well and truly to be made, we bind ourselves, our and each of our representatives, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 14th day of December, 1933.

Whereas, lately at a hearing in the United States District Court for the Northern District of Illinois, Eastern Division, in a proceeding in bankruptcy pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, in the matter of The Chicago, Rock Island and Pacific Railway Company, Debtor, an injunctional order was made and entered on November 22, 1933, restraining and enjoining the Reconstruction Finance Corporation from converting, selling, or otherwise disposing of the collateral held by it as security for the promissory notes of the Debtor, or any part thereof, until further order of the Court, and said Reconstruction Finance Corporation appearing in said cause specially and

solely for the purpose of objecting to and contesting the jurisdiction of the Court to make and enter said injunctional order, and not generally, and further appearing specially and solely for the purpose of taking a separate appeal from said injunctional order of November 22, 1933, and not generally, having obtained from said court an order allowing a separate appeal to the United States Circuit Court of Appeals for the Seventh Circuit.

Now, Therefore, the condition of the above obligation is such, that if said Reconstruction Finance Corporation shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation shall be void, otherwise to remain in full force and effect.

RECONSTRUCTION FINANCE CORPORATION,
By JESSE H. JONES,
Chairman.

(Corporate Seal)
Attest:
G. R. COOKSEY,
Secretary.

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK,
By GEORGE A. GRIFFIN,
Attorney.

(Corporate Seal)

Approved:
JAMES H. WILKERSON.

United States of America }
District of Columbia } ss.

On this 14th day of December, 1933, before me personally appeared Jesse H. Jones to me personally known, who being by me duly sworn, did depose and say: that he is the Chairman of the Reconstruction Finance Corporation, the corporation described in and which executed the foregoing instrument, that he knows the seal of said corporation; and that the seal affixed to said instrument is the said corporate seal; that the seal was affixed and the said instrument was executed by authority of its Board of Directors.

RONALD H. ALLEN,
Notary Public, District of Columbia.

(Seal)

My commission expires September 14, 1938.

District of Columbia, ss: No. 72099

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, the same being a Court of Record, having by law a seal, do hereby certify that Ronald H. Allen before whom the annexed instrument in writing was executed, and whose name is subscribed thereto, was at the time of signing the same a Notary Public in and for said District, residing therein, duly commissioned and sworn, and authorized by the laws of said District to take the acknowledgment and proof of deeds or conveyances of lands, tenements, or hereditaments, and other instruments in writing, to be recorded in said District, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to said instrument and impression of seal thereon are genuine.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said Court, at the City of Washington, D. C., the 15 day of Dec., A. D. 1933.

FRANK E. CUNNINGHAM,
(Seal) *Clerk.*
By CHAS. B. COFLIN,
Assistant Clerk.

United States of America
District of Columbia } ss.

On this 15th day of December, 1933, before me personally appeared George A. Griffin to me personally known, who being duly sworn on oath, did say: that he is Attorney of and for The Fidelity and Casualty Company of New York a corporation of New York created, organized and existing under and by virtue of the laws of New York; that the corporate seal affixed to the foregoing within instrument is the seal of the said company; that the seal was affixed and the instrument was executed by authority of its Board of Directors; and that said George A. Griffin did acknowledge that he executed the said instrument as the free act and deed of said company.

MILDRED Y. ROBESON,
(Seal) *Notary Public, District of Columbia.*

My commission expires June 25, 1935.

District of Columbia, ss: No. 72095

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, the same being a Court of Record, having by law a seal, do hereby certify that Mildred Y. Robeson before whom the annexed instrument in writing was executed, and whose name is subscribed thereto, was at the time of signing the same a Notary Public in and for said District, residing therein, duly commissioned and sworn, and authorized by the laws of said District to take the acknowledgment and proof of deeds or conveyances of lands, tenements, or hereditaments, and other instruments in writing, to be recorded in said District, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to said instrument and impression of seal thereon are genuine.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said Court, at the City of Washington, D. C., the 15 day of Dec., A. D. 1933.

FRANK E. CUNNINGHAM,
Clerk.

(Seal)

By CHAS. B. COFLIN,
Assistant Clerk.

And afterwards, to wit, on the 18th day of December, 1933, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge appears the following entry, to wit:

* * (Caption) * *

Monday, December 18, 1933.

Present: Honorable James H. Wilkerson, Judge of said Court.

This day comes the petitioner, Reconstruction Finance Corporation, by its solicitors, and present herein its bond on appeal which bond is approved and signed by the Court and ordered by the Court to be filed by the Clerk of this Court.

And afterwards, to wit, on the 10th day of January, 1934, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter C. Lindley, District Judge appears the following entry, to wit:

* * (Caption) * *

ORDER ENLARGING TIME FOR FILING TRANSCRIPT OF RECORD AND DOCKETING CASE IN CIRCUIT COURT OF APPEALS.

Upon motion of Rushmore Bisbee & Stern, attorneys for The Chase National Bank of the City of New York, appearing in this cause specially and solely for the purpose of objecting to and contesting jurisdiction of this court over said corporation, and for good cause shown, it is

Ordered that the time within which said The Chase National Bank of the City of New York shall file its Transcript of Record in the United States Circuit Court of Appeals for the Seventh Circuit on its appeal heretofore taken in the above-entitled cause, and docket said appeal in said court be, and the same hereby is, extended to and including February 13, 1934.

WALTER C. LINDLEY,
District Judge.

Dated: January 10, 1934.

And afterwards, to wit, on the 10th day of January, 1934, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter C. Lindley, District Judge appears the following entry, to wit:

* * (Caption) * *

ORDER ENLARGING TIME FOR FILING TRANSCRIPT OF RECORD AND DOCKETING CASE IN CIRCUIT COURT OF APPEALS.

Upon motion of Mayer, Meyer, Austrian & Platt, attorneys for Continental Illinois National Bank and Trust Company of Chicago, appearing in this cause specially and solely for

the purpose of objecting to and contesting jurisdiction of the court over said corporation, and for good cause shown, it is

Ordered that the time within which the said Continental Illinois National Bank and Trust Company of Chicago shall file its Transcript of Record in the United States Circuit Court of Appeals for the Seventh Circuit on its appeal heretofore taken in the above entitled cause, and docket said appeal in said court be, and the same hereby is, extended to and including February 13, 1934.

WALTER C. LINDLEY,
District Judge.

Dated: January 10, 1934.

And afterwards, to wit, on the 10th day of January, 1934, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter C. Lindley, District Judge appears the following entry, to wit:

* * (Caption) * *

ORDER ENLARGING TIME FOR FILING TRANSCRIPT OF RECORD AND DOCKETING CASE IN CIRCUIT COURT OF APPEALS.

Upon motion of Perry M. Chadwick, attorney for Harris Trust and Savings Bank, appearing in this cause specially and solely for the purpose of objecting to and contesting jurisdiction of the court over said corporation, and for good cause shown, it is

Ordered that the time within which the said Harris Trust and Savings Bank shall file its Transcript of Record on appeal in the United States Circuit Court of Appeals for the Seventh Circuit and docket said appeal in said court be, and the same hereby is, extended to and including February 13, 1934.

WALTER C. LINDLEY,
United States District Judge.

Dated: January 10, 1934.

And afterwards, to wit, on the 10th day of January, 1934, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter C. Lindley, District Judge appears the following entry, to wit:

* * (Caption) * *

ORDER ENLARGING TIME FOR FILING TRANSCRIPT OF RECORD AND DOCKETING CASE IN CIRCUIT COURT OF APPEALS.

Upon motion of S. Mayner Wallace, attorney for Mississippi Valley Trust Company, appearing in this cause specially and solely for the purpose of objecting to and contesting jurisdiction of the court over said corporation, and for good cause shown, it is

Ordered that the time within which the said Mississippi Valley Trust Company shall file its Transcript of Record in the United States Circuit Court of Appeals for the Seventh Circuit on its appeal heretofore taken in the above entitled cause, and docket said appeal in said court be, and the same hereby is, extended to and including February 13, 1934.

WALTER C. LINDLEY,
District Judge.

Dated: January 10, 1934.

And afterwards, to wit, on the 10th day of January, 1934, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter C. Lindley, District Judge appears the following entry, to wit:

* * (Caption) * *

ORDER ENLARGING TIME FOR FILING TRANSCRIPT OF RECORD AND DOCKETING CASE IN CIRCUIT COURT OF APPEALS.

Upon motion of Sims Stransky & Brewer, attorneys for The New York Trust Company, appearing in this cause specially and solely for the purpose of objecting to and con-

testing the jurisdiction of this court over said corporation, and for good cause shown, it is

Ordered that the time within which said The New York Trust Company shall file its Transcript of Record in the United States Circuit Court of Appeals for the Seventh Circuit on its appeal heretofore taken in the above-entitled cause, and docket said appeal in said court be, and the same hereby is, extended to and including February 13, 1934.

WALTER C. LINDLEY,
District Judge.

Dated: January 10, 1934.

And afterwards, to wit, on the 10th day of January, 1934, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter C. Lindley, District Judge appears the following entry, to wit:

* * (Caption) * *

ORDER ENLARGING TIME FOR FILING TRANSCRIPT OF RECORD AND DOCKETING CASE IN CIRCUIT COURT OF APPEALS.

Upon motion of Hopkins, Starr & Godman and C. M. Clay, attorneys for Reconstruction Finance Corporation, appearing in this cause specially and solely for the purpose of objecting to and contesting jurisdiction of the court over said corporation, and for good cause shown, it is

Ordered that the time within which the said Reconstruction Finance Corporation shall file its Transcript of Record on appeal in the United States Circuit Court of Appeals for the Seventh Circuit and docket said appeal in said court be, and the same hereby is, extended to and including February 13, 1934.

WALTER C. LINDLEY,
District Judge.

Dated: January 10, 1934.

* * (Caption) * *

PRAECIPE FOR RECORD.

Filed Dec. 26, 1933, Charles M. Bates, Clerk.

To the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

You are hereby requested to make a transcript of the record and proceedings had in your court in the above entitled cause to be filed in the United States Circuit Court of Appeals for the Seventh Circuit, pursuant to an appeal allowed to the undersigned in the District Court of the United States on December 12, 1933, in the above cause, and to include in such transcript the following:

1. Petition No. 1 of the Debtor, filed June 7, 1933.
2. Order No. 1 entered June 7, 1933 approving petition.
3. Order No. 1-A entered June 8, 1933 amending order of June 7, 1933.
4. Petition of Debtor for Order No. 4, filed June 26, 1933.
5. Order No. 4 entered June 26, 1933.
6. Petition of the Debtor for Order No. 5 filed July 26, 1933.
7. Order No. 5 entered July 26, 1933.
8. Petition of St. Paul & Kansas City Short Line Railroad Company and Rock Island, Arkansas & Louisiana Railroad Company for Order No. 10 filed August 28, 1933.
9. Order No. 10 on petition of St. Paul & Kansas City Short Line Railroad Company and Rock Island, Arkansas & Louisiana Railroad Company entered August 28, 1933.
10. Petition of Debtor for Order No. 11 filed August 28, 1933, respecting obligations maturing September 1, 1933.
11. Answer of the Protective Committee for the General Mortgage 4% Bonds to the Debtor's petition for Order No. 11 for authority to pay interest due September 1, 1933.
12. Order No. 11 entered August 28, 1933, respecting obligations maturing September 1, 1933.
13. Petition of the Debtor for Order No. 15 respecting the payment of interest on its collateral loans filed September 26, 1933.
14. Notice of presentation of petition for Order No. 15.
15. Affidavit of Marcus L. Bell with regard to notice of mailing of notice and petition for Order No. 15.
16. Answer of Protective Committee for the General Mort-

gage 4% Bonds of 1988 to petition for Order No. 15 filed September 26, 1933.

17. Affidavit of Dwight S. Beebe regarding petition for Order No. 15 filed September 26, 1933.

18. Special appearance of Reconstruction Finance Corporation relating to petition for Order No. 15 filed September 26, 1933.

19. Limited and special appearance of Continental Illinois Bank and Trust Company filed September 26, 1933.

20. Special appearance of The Chase National Bank of the City of New York filed September 26, 1933.

21. Affidavit of William H. Moorhead in support of the special appearance of The Chase National Bank of the City of New York filed September 26, 1933.

22. Special and limited appearance of The New York Trust Company filed September 26, 1933.

23. Affidavit of James P. Carey, Jr., in support of the special appearance of The New York Trust Company filed September 26, 1933.

24. Special appearance of Mississippi Valley Trust Company filed September 26, 1933.

25. Special appearance of Harris Trust and Savings Bank filed September 26, 1933.

26. Order No. 15 authorizing the payment of interest due September 30, 1933 on loan of Reconstruction Finance Corporation entered September 26, 1933.

27. Petition No. 21 for the appointment of trustees filed September 26, 1933.

28. Answer of Debtor to petition for Order No. 21 filed October 11, 1933.

29. Petition of The Chicago, Rock Island and Gulf Railway Company, Choctaw, Oklahoma & Gulf Railroad Company, Peoria Terminal Company, Rock Island & Dardanelle Railway Company, Rock Island, Stuttgart & Southern Railway Company, Rock Island, Memphis Terminal Railway Company, Rock Island, Omaha Terminal Railway Company for Order No. 25 filed October 24, 1933.

30. Order No. 25 on petition of subsidiary corporations entered October 24, 1933.

31. Affidavit of Milton R. Stahl filed October 25, 1933, relating to special appearance of Mississippi Valley Trust Company.

32. Order No. 15-A enjoining the sale or disposition of collateral by Reconstruction Finance Corporation and banks entered November 22, 1933.

33. Order No. 21 appointing trustees entered November 22, 1933.
34. Order No. 21-A approving bonds of trustees entered December 1, 1933.
35. Statement of evidence and order approving same.
36. All petitions for appeals filed December 12, 1933.
37. All assignments of errors filed December 12, 1933.
38. All orders allowing appeals entered December 12, 1933.
39. All appeal bonds filed in this cause.
40. All orders approving appeal bonds.
41. All citations.
42. Copy of all praecipes for record entitled in this cause.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK
By RUSHMORE, BISBEE AND STERN,
Attorneys appearing specially to object to the jurisdiction of the court over said bank.

Chicago, Ill. December 22, 1933.

* * (Caption) * *

PRAECIPE FOR RECORD.

Filed Dec. 26, 1933, Charles M. Bates, Clerk.

To the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

You are hereby requested to make a transcript of the record and proceedings had in your court in the above entitled cause to be filed in the United States Circuit Court of Appeals for the Seventh Circuit, pursuant to an appeal allowed to the undersigned in the District Court of the United States on December 12, 1933, in the above cause, and to include in such transcript the following:

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5. Order No. 4 entered June 26, 1933.
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8. Petition of St. Paul & Kansas City Short Line Railroad Company and Rock Island, Arkansas & Louisiana Railroad Company for Order No. 10 filed August 28, 1933.

9. Order No. 10 on petition of St. Paul & Kansas City Short Line Railroad Company and Rock Island, Arkansas & Louisiana Railroad Company entered August 28, 1933.

10. Petition of Debtor for Order No. 11 filed August 28, 1933, respecting obligations maturing September 1, 1933.

11. Answer of the Protective Committee for the General Mortgage 4% Bonds to the Debtor's petition for Order No. 11 for authority to pay interest due September 1, 1933.

12. Order No. 11 entered August 28, 1933, respecting obligations maturing September 1, 1933.

13. Petition of the Debtor for Order No. 15 respecting the payment of interest on its collateral loans filed September 26, 1933.

14. Notice of presentation of petition for Order No. 15.

15. Affidavit of Marcus L. Bell with regard to notice of mailing of notice and petition for Order No. 15.

16. Answer of Protective Committee for the General Mortgage 4% Bonds of 1988 to petition for Order No. 15 filed September 26, 1933.

17. Affidavit of Dwight S. Beebe regarding petition for Order No. 15 filed September 26, 1933.

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20. Special appearance of The Chase National Bank of the City of New York filed September 26, 1933.

21. Affidavit of William H. Moorhead in support of the special appearance of The Chase National Bank of the City of New York filed September 26, 1933.

22. Special and limited appearance of The New York Trust Company filed September 26, 1933.

23. Affidavit of James P. Carey, Jr., in support of the special appearance of The New York Trust Company filed September 26, 1933.

24. Special appearance of Mississippi Valley Trust Company filed September 26, 1933.

25. Special appearance of Harris Trust and Savings Bank filed September 26, 1933.

26. Order No. 15 authorizing the payment of interest due

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27. Petition No. 21 for the appointment of trustees filed September 26, 1933.

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29. Petition of The Chicago, Rock Island and Gulf Railway Company, Choctaw, Oklahoma & Gulf Railroad Company, Peoria Terminal Company, Rock Island & Dardanelle Railway Company, Rock Island, Stuttgart & Southern Railway Company, Rock Island, Memphis Terminal Railway Company, Rock Island, Omaha Terminal Railway Company for Order No. 25 filed October 24, 1933.

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38. All orders allowing appeals entered December 12, 1933.

39. All appeal bonds filed in this cause.

40. All orders approving appeal bonds.

41. All citations.

42. Copy of all praecipes for record entitled in this cause.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
By ISAAC H. MAYER,
HERBERT A. FRIEDLICH,
DAVID F. ROSENTHAL,
Its Counsel.

Chicago, Ill. December 20, 1933.

* * (Caption) * *

PRAECIPE FOR RECORD.

Filed Dec. 26, 1933, Charles M. Bates, Clerk.

To the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

You are hereby requested to make a transcript of the record and proceedings had in your court in the above entitled cause to be filed in the United States Circuit Court of Appeals for the Seventh Circuit, pursuant to an appeal allowed to the undersigned in the District Court of the United States on December 12, 1933, in the above cause, and to include in such transcript the following:

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37. All assignments of errors filed December 12, 1933.

38. All orders allowing appeals entered December 12, 1933.

39. All appeal bonds filed in this cause.

40. All orders approving appeal bonds.

41. All citations.

42. Copy of all praecipes for record entitled in this cause.

PERRY M. CHADWICK,
Attorney for Harris Trust & Savings Banks appearing specially for the sole and only purpose of denying and objecting to the jurisdiction of the court to enter the injunctional order entered herein November 22, 1933, and not generally, and of prosecuting an appeal from said injunctional order and not generally.

Chicago, Ill. December 20, 1933.

* * (Caption) * *

PRAECIPE FOR RECORD.

Filed Dec. 26, 1933, Charles M. Bates, Clerk.

To the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

You are hereby requested to make a transcript of the record and proceedings had in your court in the above entitled cause to be filed in the United States Circuit Court of Appeals for the Seventh Circuit, pursuant to an appeal allowed to the undersigned in the District Court of the United States on December 12, 1933, in the above cause, and to include in such transcript the following:

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20. Special appearance of The Chase National Bank of the City of New York filed September 26, 1933.
21. Affidavit of William H. Moorhead in support of the special appearance of The Chase National Bank of the City of New York filed September 26, 1933.
22. Special and limited appearance of The New York Trust Company filed September 26, 1933.
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30. Order No. 25 on petition of subsidiary corporations entered October 24, 1933.
31. Affidavit of Milton R. Stahl filed October 25, 1933, relating to special appearance of Mississippi Valley Trust Company.
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33. Order No. 21 appointing trustees entered November 22, 1933.
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37. All assignments of errors filed December 12, 1933.
38. All orders allowing appeals entered December 12, 1933.
39. All appeal bonds filed in this cause.
40. All orders approving appeal bonds.
41. All citations.
42. Copy of all praecipes for record entitled in this cause.

MISSISSIPPI VALLEY TRUST COMPANY,
By T. M. PIERCE,
MILTON R. STAHL,
S. MAYNER WALLACE,
Its Counsel.

Chicago, Ill. December 20, 1933.

* * (Caption) * *

PRAECIPE FOR RECORD.

Filed Dec. 26, 1933, Charles M. Bates, Clerk.

To the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

You are hereby requested to make a transcript of the record and proceedings had in your court in the above entitled cause to be filed in the United States Circuit Court of Appeals for the Seventh Circuit, pursuant to an appeal allowed to the undersigned in the District Court of the United States on December 12, 1933, in the above cause, and to include in such transcript the following:

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16. Answer of Protective Committee for the General Mort-

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17. Affidavit of Dwight S. Beebe regarding petition for Order No. 15 filed September 26, 1933.

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37. All assignments of errors filed December 12, 1933.
38. All orders allowing appeals entered December 12, 1933.
39. All appeal bonds filed in this cause.
40. All orders approving appeal bonds.
41. All citations.
42. Copy of all praecipes for record entitled in this cause.

THE NEW YORK TRUST COMPANY,
By EDWIN W. SIMS,
JAMES P. CAREY, JR.,
Attorneys appearing specially and solely for the purpose of objecting to the jurisdiction of the court over said Trust Company, and not generally, and of prosecuting an appeal from said injunctional order and not generally.

Chicago, Ill. December 20, 1933.

* * (Caption) * *

PRAECIPE FOR RECORD.

Filed Dec. 26, 1933. Charles M. Bates, Clerk.

To the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

You are hereby requested to make a transcript of the record and proceedings had in your court in the above entitled cause to be filed in the United States Circuit Court of Appeals for the Seventh Circuit, pursuant to an appeal allowed to the undersigned in the District Court of the United States on December 12, 1933, in the above cause, and to include in such transcript the following:

1. Petition No. 1 of the Debtor, filed June 7, 1933.
2. Order No. 1 entered June 7, 1933 approving petition.
3. Order No. 1-A entered June 8, 1933 amending order of June 7, 1933.
4. Petition of Debtor for Order No. 4, filed June 26, 1933.

5. Order No. 4 entered June 26, 1933.
6. Petition of the Debtor for Order No. 5 filed July 26, 1933.
7. Order No. 5 entered July 26, 1933.
8. Petition of St. Paul & Kansas City Short Line Railroad Company and Rock Island, Arkansas & Louisiana Railroad Company for Order No. 10 filed August 28, 1933.
9. Order No. 10 on petition of St. Paul & Kansas City Short Line Railroad Company and Rock Island, Arkansas & Louisiana Railroad Company entered August 28, 1933.
10. Petition of Debtor for Order No. 11 filed August 28, 1933, respecting obligations maturing September 1, 1933.
11. Answer of the Protective Committee for the General Mortgage 4% Bonds to the Debtor's petition for Order No. 11 for authority to pay interest due September 1, 1933.
12. Order No. 11 entered August 28, 1933, respecting obligations maturing September 1, 1933.
13. Petition of the Debtor for Order No. 15 respecting the payment of interest on its collateral loans filed September 26, 1933.
14. Notice of presentation of petition for Order No. 15.
15. Affidavit of Marcus L. Bell with regard to notice of mailing of notice and petition for Order No. 15.
16. Answer of Protective Committee for the General Mortgage 4% Bonds of 1988 to petition for Order No. 15 filed September 26, 1933.
17. Affidavit of Dwight S. Beebe regarding petition for Order No. 15 filed September 26, 1933.
18. Special appearance of Reconstruction Finance Corporation relating to petition for Order No. 15 filed September 26, 1933.
19. Limited and special appearance of Continental Illinois Bank and Trust Company filed September 26, 1933.
20. Special appearance of The Chase National Bank of the City of New York filed September 26, 1933.
21. Affidavit of William H. Moorhead in support of the special appearance of The Chase National Bank of the City of New York filed September 26, 1933.
22. Special and limited appearance of The New York Trust Company filed September 26, 1933.
23. Affidavit of James P. Carey, Jr., in support of the special appearance of The New York Trust Company filed September 26, 1933.
24. Special appearance of Mississippi Valley Trust Company filed September 26, 1933.

25. Special appearance of Harris Trust and Savings Bank filed September 26, 1933.
26. Order No. 15 authorizing the payment of interest due September 30, 1933 on loan of Reconstruction Finance Corporation entered September 26, 1933.
27. Petition No. 21 for the appointment of trustees filed September 26, 1933.
28. Answer of Debtor to petition for Order No. 21 filed October 11, 1933.
29. Petition of The Chicago, Rock Island and Gulf Railway Company, Choctaw, Oklahoma & Gulf Railroad Company, Peoria Terminal Company, Rock Island & Dardanelle Railway Company, Rock Island, Stuttgart & Southern Railway Company, Rock Island, Memphis Terminal Railway Company, Rock Island, Omaha Terminal Railway Company for Order No. 25 filed October 24, 1933.
30. Order No. 25 on petition of subsidiary corporations entered October 24, 1933.
31. Affidavit of Milton R. Stahl filed October 25, 1933, relating to special appearance of Mississippi Valley Trust Company.
32. Order No. 15-A enjoining the sale or disposition of collateral by Reconstruction Finance Corporation and banks entered November 22, 1933.
33. Order No. 21 appointing trustees entered November 22, 1933.
34. Order No. 21-A approving bonds of trustees entered December 1, 1933.
35. Statement of evidence and order approving same.
36. All petitions for appeals filed December 12, 1933.
37. All assignments of errors filed December 12, 1933.
38. All orders allowing appeals entered December 12, 1933.
39. All appeal bonds filed in this cause.
40. All orders approving appeal bonds.
41. All citations.
42. Copy of all praecipes for record entitled in this cause.

HOPKINS, STARR & GODMAN,

Solicitors for Reconstruction Finance Corporation, appearing specially for the sole and only purpose of denying and objecting to the jurisdiction of the court to enter the injunctional order entered herein November 22, 1933, and not generally, and of prosecuting an appeal from said injunctional order and not generally.

Chicago, Ill., December 19, 1933.

* * (Caption) * *

ACKNOWLEDGMENT OF SERVICE OF PRAECIPE FOR RECORD.

The undersigned hereby acknowledges service of and receipt of a copy of Praecipe for Record of Continental Illinois National Bank and Trust Company of Chicago, The Chase National Bank of the City of New York, Mississippi Valley Trust Company, Harris Trust & Savings Bank, The New York Trust Company, Reconstruction Finance Corporation. December 21st, 1933.

MARCUS L. BELL, WM. F. DICKINSON AND W. F. PETER,
Counsel for The Chicago, Rock Island and Pacific Railway Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

ROOT CLARK BUCKNER & BALLANTINE
Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and the Debtor's Secured 4½% Gold Bonds.

CADWALADER WICKERSHAM & TAFT
Counsel for the Protective Committee of the Debtor's Thirty-Year 4½% Convertible Gold Bonds.

WHITE & CASE
Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage gold bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

ALEXANDER & GREEN
Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.

HORNBLOWER MILLER MILLER & BOSTON
Counsel for the Protective Committee of the Burlington, Cedar Rapids & Northern Railway Company Consolidated 5% Gold Bonds.

Northern District of Illinois
Eastern Division } ss:

I, Charles M. Bates, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Praecipe filed in this Court in the cause entitled In the Matter of The Chicago, Rock Island and Pacific Railway Company, Debtor, as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 13th day of February, A. D. 1934.

CHARLES M. BATES,
Clerk.

* * (Caption) * *

CITATION.

United States of America, } ss.

The President of the United States, To:

The Chicago, Rock Island and Pacific Railway Company, Debtor; To:

Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, trustees of all the property of the Debtor; to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds: Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Chicago, Illinois, within 30 days from the date hereof, pursuant to an order allowing Appeal filed in the Clerk's office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein The Chase National Bank of the City of New York is Appellant and you are Appellees to show cause, if any there be, why the injunction and order rendered against the said Appellant as in the said order allowing Appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. James H. Wilkerson, Judge of the United States District Court for the Northern District of Illinois, Eastern Division, this 12th day of December, 1933.

JAMES H. WILKERSON,
Judge.

Service of the above citation is hereby acknowledged this 15 day of December, 1933.

MARCUS L. BELL,
WM. F. DICKINSON,
W. F. PETER,
Counsel for The Chicago, Rock Island and Pacific Railway Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

ROOT, CLARK, BUCKNER & BALLANTINE,
Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and the Debtor's Secured 4½% Gold Bonds.

CADWALADER, WICKERSHAM & TAFT
Counsel for the Protective Committee of the Debtor's Thirty-Year 4½% Convertible Gold Bonds.

WHITE & CASE
Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

ALEXANDER & GREEN
Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.

HORNBLOWER, MILLER, MILLER & BOSTON,
Counsel for the Protective Committee of the Burlington, Cedar Rapids & Northern Railway Company Consolidated 5% Gold Bonds.

Endorsed: • • (Caption) • • Citation. Filed Dec. 18, 1933, Charles M. Bates, Clerk. Rushmore, Bisbee & Stern, Attorneys for The Chase National Bank of the City of New York, 20 Pine Street, Borough of Manhattan, New York City.

United States of America, } ss.

The President of the United States, To The Chicago Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor, to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to order allowing appeal filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Continental Illinois National Bank and Trust Company of Chicago, Illinois, is appellant, and you are appellees to show cause, if any there be, why the order rendered against the said appellant as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Wilkerson, Judge of the District Court of the United States, this 12th day of De-

cember, in the year of our Lord one thousand nine hundred and thirty-three.

JAMES H. WILKERSON,
U. S. District Judge.

Service of the within citation and receipt of a copy thereof is hereby acknowledged this 15 day of December, 1933.

MARCUS L. BELL,
WM. F. DICKINSON,
W. F. PETER,
Counsel for The Chicago, Rock Island and Pacific Railway Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

ROOT, CLARK, BUCKNER & BALLANTINE,
Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and the Debtor's Secured 4½% Gold Bonds.

CADWALADER, WICKERSHAM & TAFT,
Counsel for the Protective Committee of the Debtor's Thirty-Year 4½% Convertible Gold Bonds.

WHITE & CASE,
Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

ALEXANDER & GREEN,
Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.

HORNBLOWER MILLER MILLER & BOSTON,
Counsel for the Protective Committee of the Burlington, Cedar Rapids & Northern Railway Company Consolidated 5% Gold Bonds.

Endorsed: • • (Caption) • • Citation. Filed Dec. 18, 1933, Charles M. Bates, Clerk.

United States of America, } ss.

The President of the United States, To The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor, to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds—Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago within thirty days from the date hereof, pursuant to order allowing appeal filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Harris Trust and Savings Bank, of Chicago, Illinois, is appellant, and you are appellees to show cause, if any there be, why the order rendered against the said appellant as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Wilkerson, Judge of the District Court of the United States, this 12th day of Decem-

ber, in the year of our Lord one thousand nine hundred and thirty-three.

JAMES H. WILKERSON,
Judge.

Service of the within citation and receipt of a copy thereof is hereby acknowledged this 15 day of December, 1933.

MARCUS L. BELL,
WM. F. DICKINSON,
W. F. PETER,
Counsel for The Chicago, Rock Island and Pacific Railway Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

ROOT, CLARK, BUCKNER & BALLANTINE,
Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and the Debtor's Secured 4½% Gold Bonds.

CADWALADER, WICKERSHAM & TAFT,
Counsel for the Protective Committee of the Debtor's Thirty-Year 4½% Convertible Gold Bonds.

WHITE & CASE,
Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

ALEXANDER & GREEN,
Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.

HORNBLOWER, MILLER, MILLER & BOSTON,
Counsel for the Protective Committee of the Burlington, Cedar Rapids & Northern Railway Company Consolidated 5% Gold Bonds.

(Endorsed) • • (Caption) • • • Citation Filed Dec 18 1933 Charles M. Bates, Clerk.

United States of America, } ss.

The President of the United States, To The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor, to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds—Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago within thirty days from the date hereof, pursuant to order allowing appeal filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Mississippi Valley Trust Company, is appellant and you are appellees to show cause, if any there be, why the order rendered against the said appellant as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Wilkerson, Judge of the District Court of the United States, this 12th day of Decem-

ber, in the year of our Lord one thousand nine hundred and thirty-three.

JAMES H. WILKERSON,
Judge.

Service of the within citation and receipt of a copy thereof is hereby acknowledged this 15 day of December, 1933.

MARCUS L. BELL,
WM. F. DICKINSON,
W. F. PETER,
Counsel for The Chicago, Rock Island and Pacific Railway Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

ROOT, CLARK, BUCKNER & BALLANTINE,
Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and the Debtor's Secured 4½% Gold Bonds.

CADWALADER, WICKERSHAM & TAFT,
Counsel for the Protective Committee of the Debtor's Thirty-Year 4½% Convertible Gold Bonds.

WHITE & CASE,
Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

ALEXANDER & GREEN;
Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.

HORNBLOWER, MILLER, MILLER & BOSTON,
Counsel for the Protective Committee of the Burlington, Cedar Rapids & Northern Railway Company Consolidated 5% Gold Bonds.

(Endorsed) • • (Caption) • • Citation Filed Dec 18 1933 Charles M. Bates, Clerk.

United States of America, } ss.

The President of the United States, To The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor, to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds—Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago within thirty days from the date hereof, pursuant to order allowing appeal filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein The New York Trust Company, is appellant, and you are appellees to show cause, if any there be, why the order rendered against the said appellant as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Wilkerson, Judge of the District Court of the United States, this 12th day of Decem-

ber, in the year of our Lord one thousand nine hundred and Thirty-three.

JAMES H. WILKERSON,
Judge.

Service of the within citation and receipt of a copy thereof is hereby acknowledged this 15 day of December, 1933.

MARCUS L. BELL,
WM. F. DICKINSON,
W. F. PETER,
Counsel for The Chicago, Rock Island and Pacific Railway Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

ROOT, CLARK, BUCKNER & BALLANTINE,
Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and the Debtor's Secured 4½% Gold Bonds.

CADWALADER, WICKERSHAM & TAFT,
Counsel for the Protective Committee of the Debtor's Thirty-Year 4½% Convertible Gold Bonds.

WHITE & CASE,
Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

ALEXANDER & GREEN,
Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.

HORNBLOWER, MILLER, MILLER & BOSTON,
Counsel for the Protective Committee of the Burlington, Cedar Rapids & Northern Railway Company Consolidated 5% Gold Bonds.

(Endorsed) • • (Caption) • • Citation Filed Dec 18 1933 Charles M. Bates, Clerk.

United States of America, } ss.

The President of the United States, To The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor, to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds—Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago within thirty days from the date hereof, pursuant to order allowing appeal filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Reconstruction Finance Corporation, is appellant, and you are appellees to show cause, if any there be, why the order rendered against the said appellant as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Wilkerson, Judge of the District Court of the United States, this 12th day of Decem-

ber, in the year of our Lord one thousand nine hundred and thirty-three.

JAMES H. WILKERSON,
Judge.

Service of the within citation and receipt of a copy thereof is hereby acknowledged this 15 day of December, 1933.

MARCUS L. BELL,
WM. F. DICKINSON,
W. F. PETER,
Counsel for The Chicago, Rock Island and Pacific Railway Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

ROOT, CLARK, BUCKNER & BALLANTINE,
Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and the Debtor's Secured 4½% Gold Bonds.

CADWALADER, WICKERSHAM & TAFT,
Counsel for the Protective Committee of the Debtor's Thirty-Year 4½% Convertible Gold Bonds.

WHITE & CASE,
Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

ALEXANDER & GREEN,
Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.

HORNBLOWER, MILLER, MILLER & BOSTON,
Counsel for the Protective Committee of the Burlington, Cedar Rapids & Northern Railway Company Consolidated 5% Gold Bonds.

(Endorsed) • • (Caption) • • Citation Filed Dec 18 1933 Charles M. Bates, Clerk.

(The transcript of record filed in Causes Nos. 5115, 5116, 5117, 5118, 5119 and 5120 in the United States Circuit Court of Appeals, are identical with the foregoing record excepting the appeal papers, praecipes and citations. A specimen of the praecipes which were the same in all six cases excepting the names of the parties and counsel, is as follows):

"IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
The Chicago, Rock Island and Pacific Railway Company,
Debtor.

Continental Illinois National Bank and Trust Co. of Chicago,
Appellant,
vs.
The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of all the property of said Railway Company, *et al.*,
Appellees.

No. 5115.

PRAECIPE FOR RECORD.

Filed Dec. 26, 1933, Charles M. Bates, Clerk.

To the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

You are hereby requested to make a transcript of the record and proceedings had in your court in the cause entitled "In the Matter of The Chicago, Rock Island and Pacific Railway Company, Debtor, No. 53209" to be filed in the United States Circuit Court of Appeals for the Seventh Circuit, pur-

suant to an appeal allowed to the undersigned by said Circuit Court of Appeals on December 12, 1933, and to include in such transcript the following:

1. Petition No. 1 of the Debtor, filed June 7, 1933.

2. Order No. 1 entered June 7, 1933 approving petition.

3. Order No. 1-A entered June 8, 1933 amending order of June 7, 1933.

4. Petition of Debtor for Order No. 4, filed June 26, 1933.

5. Order No. 4 entered June 26, 1933.

6. Petition of the Debtor for Order No. 5 filed July 26, 1933.

7. Order No. 5 entered July 26, 1933.

8. Petition of St. Paul & Kansas City Short Line Railroad Company and Rock Island, Arkansas & Louisiana Railroad Company for Order No. 10 filed August 28, 1933.

9. Order No. 10 on petition of St. Paul & Kansas City Short Line Railroad Company and Rock Island, Arkansas & Louisiana Railroad Company entered August 28, 1933.

10. Petition of Debtor for Order No. 11 filed August 28, 1933, respecting obligations maturing September 1, 1933.

11. Answer of the Protective Committee for the General Mortgage 4% Bonds to the Debtor's petition for Order No. 11 for authority to pay interest due September 1, 1933.

12. Order No. 11 entered August 28, 1933, respecting obligations maturing September 1, 1933.

13. Petition of the Debtor for Order No. 15 respecting the payment of interest on its collateral loans filed September 26, 1933.

14. Notice of presentation of petition for Order No. 15.

15. Affidavit of Marcus L. Bell with regard to notice of mailing of notice and petition for Order No. 15.

16. Answer of Protective Committee for the General Mortgage 4% Bonds of 1988 to petition for Order No. 15 filed September 26, 1933.

17. Affidavit of Dwight S. Beebe regarding petition for Order No. 15 filed September 26, 1933.

18. Special appearance of Reconstruction Finance Corporation relating to petition for Order No. 15 filed September 26, 1933.

19. Limited and special appearance of Continental Illinois Bank and Trust Company filed September 26, 1933.

20. Special appearance of The Chase National Bank of the City of New York filed September 26, 1933.

21. Affidavit of William H. Moorhead in support of the special appearance of The Chase National Bank of the City of New York filed September 26, 1933.

22. Special and limited appearance of The New York Trust Company filed September 26, 1933.

23. Affidavit of James P. Carey, Jr., in support of the special appearance of The New York Trust Company filed September 26, 1933.

24. Special appearance of Mississippi Valley Trust Company filed September 26, 1933.

25. Special appearance of Harris Trust and Savings Bank filed September 26, 1933.

26. Order No. 15 authorizing the payment of interest due September 30, 1933 on loan of Reconstruction Finance Corporation entered September 26, 1933.

27. Petition No. 21 for the appointment of trustees filed September 26, 1933.

28. Answer of Debtor to petition for Order No. 21 filed October 11, 1933.

29. Petition of The Chicago, Rock Island and Gulf Railway Company, Choctaw, Oklahoma & Gulf Railroad Company, Peoria Terminal Company, Rock Island & Dardanelle Railway Company, Rock Island, Stuttgart & Southern Railway Company, Rock Island, Memphis Terminal Railway Company, Rock Island, Omaha Terminal Railway Company for Order No. 25 filed October 24, 1933.

30. Order No. 25 on petition of subsidiary corporations entered October 24, 1933.

31. Affidavit of Milton R. Stahl filed October 25, 1933, relating to special appearance of Mississippi Valley Trust Company.

32. Order No. 15-A enjoining the sale or disposition of collateral by Reconstruction Finance Corporation and banks entered November 22, 1933.

33. Order No. 21 appointing trustees entered November 22, 1933.

34. Order No. 21-A approving bonds of trustees entered December 1, 1933.

35. Statement of evidence and order approving same.

36. Copy of all praecipes entitled in the above named cause filed in the said District Court.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
By ISAAC H. MAYER,
DAVID F. ROSENTHAL,
HERBERT A. FRIEDLICH,
Its Counsel.

Chicago, Ill. December 20, 1933."

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

In the Matter of The Chicago, Rock Island and Pacific Railway Company, *Debtor.*	
The Chase National Bank of the City of New York, Reconstruction Finance Corporation, The New York Trust Company, Mississippi Valley Trust Company, Continental Illinois National Bank and Trust Company, and Harris Trust and Savings Bank, *Appellants,* *vs.* The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of all of the properties of said Debtor, *et al,* *Appellees.*	5115.

NOTICE.

To: Frank O. Lowden, James E. Gorman, Joseph B. Fleming, LaSalle Street Station, Chicago. Trustees of all of the properties of the Debtor.

W. E. Dickinson, and W. F. Peter, 1025 LaSalle Street Station, Chicago, Attorneys for Debtor.

You Are Hereby Notified that on Tuesday, December 12th, 1933, at the opening of court at 9:30 o'clock A. M., or as soon thereafter as counsel may be heard, we and each of us shall severally appear before the United States Circuit Court of Appeals for the Seventh Circuit, in the room usually occupied by it as a court room in the Federal Building, Chicago, Illinois, for the purpose of presenting the several petitions of The Chase National Bank of the City of New York, Reconstruction Finance Corporation, The New York Trust Company, Mississippi Valley Trust Company, Continental Illinois National Bank and Trust Company, and Harris Trust and

Savings Bank, for an appeal by each of them from the injunctional order of the United States District Court for the Northern District of Illinois, Eastern Division, made and entered by the Honorable James H. Wilkerson, one of the Judges thereof, on the 22nd day of November, 1933, in a proceeding in said court entitled "In the Matter of The Chicago, Rock Island and Pacific Railway Company, Debtor, No. 53209", restraining and enjoining the aforesaid Finance Corporation, banks and trust companies, and each of them, from converting, selling, or otherwise disposing of the collateral, or any part thereof, held by each of them as security for the promissory notes of the Debtor, until further order of the Court, and shall ask the said Circuit Court of Appeals to enter an order allowing an appeal in accordance with each of said petitions.

RUSHMORE, BISBEE & STERN,
Attorneys for The Chase National Bank of the City of New York, appearing specially and solely for the purposes aforesaid.

HOPKINS, STARR & GOODMAN—C. M. CLAY,
Attorneys for Reconstruction Finance Corporation, appearing specially and solely for the purposes aforesaid.

SIMS, STRANSKY & BREWER,
Attorneys for The New York Trust Company, appearing specially and solely for the purposes aforesaid.

S. MAYNER WALLACE,
Attorneys for Mississippi Valley Trust Company, appearing specially and solely for the purposes aforesaid.

MAYER, MEYER, AUSTRIAN & PLATT,
Attorneys for Continental Illinois National Bank and Trust Company, appearing specially and solely for the purposes aforesaid.

CHAPMAN & CUTLER,
Attorneys for Harris Trust & Savings Bank, appearing specially and solely for the purposes aforesaid.

December 11th, 1933.

Service of the above notice of appeal together with receipt

of a copy thereof is hereby accepted and acknowledged this 11th day of December, 1933.

FRANK O. LOWDEN
JAMES E. GORMAN
JOSEPH B. FLEMING
Trustees of all of the properties of the Debtor.

W. F. DICKINSON
W. F. PETER
Attorneys for the Debtor.

(Endorsed): * * Notice. Filed Dec 12 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5115) * *

NOTICE.

To: Marcus L. Bell, Esq., 25 Broad Street, New York City, Counsel for The Chicago, Rock Island and Pacific Railway Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

Root, Clark, Buckner & Ballantine, Esqs., 31 Nassau Street, New York City, Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and the Debtor's Secured 4½% Gold Bonds.

Cadwalader, Wickersham & Taft, Esqs., 40 Wall Street, New York City, Counsel for the Protective Committee of the Debtor's Thirty-year 4½% Convertible Gold Bonds.

White & Case, Esqs., 14 Wall Street, New York City, Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

Alexander & Green, Esqs., 120 Broadway, New York City, Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.

Hornblower, Miller, Miller & Boston, Esqs., 15 Broad Street, New York City, Counsel for the Protective Committee of the Burlington, Cedar Rapids & Northern Railway Company Consolidated 5% Gold Bonds.

You Are Hereby Notified that on Tuesday, December 12th, 1933, at the opening of court at 9:30 o'clock A. M., or as soon thereafter as counsel may be heard, we and each of us shall severally appear before the United States Circuit Court of

Appeals for the Seventh Circuit, in the room usually occupied by it as a court room in the Federal Building, Chicago, Illinois, for the purpose of presenting the several petitions of The Chase National Bank of the City of New York, Reconstruction Finance Corporation, The New York Trust Company, Mississippi Valley Trust Company, Continental Illinois National Bank and Trust Company, and Harris Trust and Savings Bank, for an appeal by each of them from the injunctional order of the United States District Court for the Northern District of Illinois, Eastern Division, made and entered by the Honorable James H. Wilkerson, one of the Judges thereof, on the 22nd day of November, 1933, in a proceeding in said court entitled "In the Matter of The Chicago, Rock Island and Pacific Railway Company, Debtor, No. 53209," restraining and enjoining the aforesaid Finance Corporation, banks and trust companies and each of them, from converting, selling, or otherwise disposing of the collateral, or any part thereof, held by each of them as security for the promissory notes of the Debtor, until further order of the Court, and shall ask the said Circuit Court of Appeals to enter an order allowing an appeal in accordance with each of said petitions.

RUSHMORE, BISBEE & STERN,
Attorneys for The Chase National Bank of the City of New York, appearing specially and solely for the purposes aforesaid.

HOPKINS, STARR & GODMAN—C. M. CLAY,
Attorneys for Reconstruction Finance Corporation, appearing specially and solely for the purposes aforesaid.

SIMS, STRANSKY & BREWER,
Attorneys for The New York Trust Company, appearing specially and solely for the purposes aforesaid.

S. MAYNER WALLACE,
Attorneys for Mississippi Valley Trust Company, appearing specially and solely for the purposes aforesaid.

MAYER, MEYER, AUSTRIAN & PLATT,
Attorneys for Continental Illinois National Bank and Trust Company, appearing specially and solely for the purposes aforesaid.

CHAPMAN & CUTLER,
Attorneys for Harris Trust & Savings Bank, appearing specially and solely for the purposes aforesaid.

December 9, 1933.

Service of the above notice of appeal together with receipt of a copy thereof is hereby accepted and acknowledged this 9th day of December, 1933.

MARCUS L. BELL,
WM. F. DICKINSON,
W. F. PETER,
Counsel for The Chicago, Rock Island and Pacific Railway Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

ROOT, CLARK, BUCKNER & BALLANTINE,
Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and the Debtor's Secured 4½% Gold Bonds.

CADWALADER, WICKERSHAM & TAFT,
Counsel for the Protective Committee of the Debtor's Thirty-Year 4½% Convertible Gold Bonds.

WHITE & CASE,
Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

ALEXANDER & GREEN,
Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.

HORNBLOWER, MILLER, MILLER & BOSTON,
Counsel for the Protective Committee of the Burlington, Cedar Rapids & Northern Railway Company Consolidated 5% Gold Bonds.

(Endorsed): • • Notice of Appeal. Filed Dec 12 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5115) * *

PETITION FOR ALLOWANCE OF APPEAL.

To the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Your petitioner, Continental Illinois National Bank and Trust Company of Chicago, a corporation, deeming itself aggrieved by the injunctional order of the United States District Court for the Northern District of Illinois, Eastern Division, made and entered by the Honorable James H. Wilkerson, one of the Judges thereof, on the 22nd day of November, 1933, restraining and enjoining your petitioner from converting, selling or otherwise disposing of the collateral held by it as security for promissory notes of The Chicago, Rock Island and Pacific Railway Company, the Debtor in the above entitled proceeding, until the further order of said United States District Court, respectfully petitions your Honors for leave to appeal from said injunctional order of said United States District Court.

In support of this petition your petitioner respectfully represents that on the 7th day of June, A. D. 1933, the said Debtor filed its petition under section 77 of chapter VIII of the Acts of Congress relating to bankruptcy, setting forth that it was without funds to pay its obligations as they matured, and that it desired to effect a plan of reorganization pursuant to said section. The court thereupon entered an order approving said petition and directing the Debtor to manage and operate its railroad until the further order of the Court. Thereafter, on the 26th day of September, A. D. 1933, the said Debtor filed its petition for Order No. 15, alleging that it was indebted upon certain notes to the Continental Illinois National Bank and Trust Company of Chicago and to five other creditors designated in said petition; that all of said notes were secured by large amounts of collateral in the possession of the Continental Illinois National Bank and Trust Company of Chicago and said creditors. The petitioner asked that the Court enjoin and restrain the holders of all of said collateral notes from selling and converting said collateral.

Your petitioner further represents that it filed its special

appearance for the sole purpose of objecting to and contesting the jurisdiction of the District Court over it in the matter of said petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by it. The District Court, nevertheless, on November 22, 1933, entered its order pursuant to said petition restraining and enjoining your petitioner from converting, selling or otherwise disposing of the collateral held by it as security for the promissory notes of the Debtor until the further order of said District Court.

The present proceeding involves the interpretation of section 77 of chapter VIII, of the Acts of Congress relating to bankruptcy added by an act approved March 3, 1933, as to whether said section authorizes and empowers the Court in a summary proceeding to enjoin the sale of collateral security in the possession of creditors of the Debtor.

Your petitioner also refers to the assignment of errors filed by it simultaneously with this petition, setting forth the errors made by the Court below, and giving the grounds for this appeal, and makes said assignment of errors a part hereof.

Wherefore, your petitioner prays that it may be allowed in the discretion of this Honorable Court to appeal in matter of law herein, that the prayer of said petition be granted and a citation be issued directed to Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor, to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrell P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island,

Arkansas & Louisiana First Mortgage 4½% Bonds, commanding them to appear before the United States Circuit Court of Appeals for the Seventh Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record and proceedings in said proceeding, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Seventh Circuit.

And your petitioner prays that the Court fix the amount of the bond which petitioner shall give on said appeal.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
Petitioner.
By ISAAC H. MAYER, DAVID F. ROSENTHAL and HERBERT A. FRIEDLICH,
Attorneys for Continental Illinois National Bank and Trust Company of Chicago.

ISAAC H. MAYER,
DAVID F. ROSENTHAL,
HERBERT A. FRIEDLICH,
Solicitors and of Counsel.

(Endorsed): * * Petition for Allowance of Appeal. Filed Dec. 12, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5115) * * *

ASSIGNMENT OF ERRORS.

Comes now the Continental Illinois National Bank and Trust Company of Chicago, having appeared in the above entitled cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court below over said bank in the matter of the petition of the Debtor for order No. 15 for an injunction against the sale of collateral held by said bank, and not generally, and now further appearing herein for the purpose of taking a separate appeal from the injunctional order entered herein on November 22, 1933, by the Honorable James H. Wilkerson, Judge of the United States District Court for the Northern District of Illinois, restraining and enjoining the Continental Illinois National

Bank and Trust Company of Chicago from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory notes of the Debtor, or any part thereof, until further order of said Court and files the following assignment of errors upon which it will rely in the prosecution of its appeal;

1. The Court erred in entering the injunctional order of November 22, 1933, purporting to restrain and enjoin the Continental Illinois National Bank and Trust Company of Chicago from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory notes of the Debtor, or any part thereof, until further order of said Court.

2. The Court erred in holding that it had jurisdiction over the person of the Continental Illinois National Bank and Trust Company of Chicago.

3. The Court erred in holding that it possessed jurisdiction to enter said injunctional order of November 22, 1933, purporting to restrain and enjoin the Continental Illinois National Bank and Trust Company of Chicago from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory notes of the Debtor, or any part thereof, until further order of said Court.

4. The Court erred in finding in its said injunctional order of November 20, 1933, that the facts set forth in the petition of the Debtor for Order No. 15 are true and accurate.

5. The Court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the affidavit of Dwight S. Beebe, verified September 25, 1933, and filed herein on September 26, 1933, are true and accurate.

6. The Court erred in finding that a sale of the collateral held by the Continental Illinois National Bank and Trust Company of Chicago, or any part thereof, would hinder, impede, obstruct, delay and in effect prevent the orderly preparation and consummation of the plan of reorganization of the trust estate.

7. The Court erred in finding that it is necessary for the enforcement of the provisions of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy that the Continental Illinois National Bank and Trust Company of Chicago be enjoined and restrained from selling or disposing of the collateral held by it as security for the promissory notes of the Debtor, or any part thereof, pending the preparation and consummation of a plan of reorganization.

8. The Court erred in not requiring, as a condition precedent to the entry of said injunctional order, a bond conditioned upon the payment of such costs and damages as may be incurred by the Continental Illinois National Bank and Trust Company of Chicago if found to have been wrongfully enjoined or restrained by said order.

9. The Court erred in not holding that a construction of Section 77 of Chapter 8 of the Acts of Congress passed March 3, 1933, relating to Bankruptcy, which would authorize the issuance of the injunctional order from which this appeal is prayed, would violate the Constitution of the United States, and more particularly the Fifth Amendment thereto, as depriving the Continental Illinois National Bank and Trust Company of Chicago of its property without due process of law.

10. Section 77 of Chapter 8 of the Bankruptcy Laws of the United States, as construed by the court below, and its issuance of the injunctional order appealed from based upon said construction deprives the Continental Illinois National Bank and Trust Company of Chicago of its property without due process of law, in violation of the Constitution of the United States, and more particularly of the Fifth Amendment thereto.

Wherefore, appellant prays that the injunctional order entered herein on November 22, 1933, be reversed, and that said injunction be dissolved; and that such other and further relief may be given this appellant as to this Honorable Court may seem just and proper.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
By ISAAC H. MAYER,
DAVID F. ROSENTHAL and
HERBERT A. FRIEDLICH,
Attorneys for the Continental Illinois National Bank and Trust Company of Chicago.

ISAAC H. MAYER,
DAVID F. ROSENTHAL,
HERBERT A. FRIEDLICH,
Solicitors and of Counsel.

(Endorsed) Assignment of Errors. Filed Dec. 12, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Louis FitzHenry, Circuit Judge.

* * (Caption—5115) * *

ORDER ALLOWING APPEAL.

The petition of the Continental Illinois National Bank and Trust Company of Chicago, a corporation, appearing herein for the purpose of denying and objecting to the jurisdiction of the Court below over said corporation in the matter of the petition of the Debtor herein for Order No. 15 for an injunction against the sale of collateral held by said corporation, and for leave of this Court to take a separate appeal from the said injunctional order entered by the United States District Court on November 22, 1933, is hereby granted; and an appeal is hereby allowed to this Court from the injunctional order entered by the United States District Court for the Northern District of Illinois, Eastern Division, on November 22, 1933, restraining and enjoining said Continental Illinois National Bank and Trust Company of Chicago from converting, selling or otherwise disposing of the collateral held by it as security for promissory notes of the Debtor herein, upon the said Continental Illinois National Bank and Trust Company of Chicago giving bond as required by law in the sum of Two Hundred Fifty Dollars.

It Is Further Ordered that the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, prepare and certify a transcript of the record and proceedings herein, in accordance with the statutes and the rules of the said District Court, and transmit the same to the United States Circuit Court of Appeals for the Seventh Circuit.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5115) * *

BOND ON APPEAL OF THE CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO.

Know All Men By These Presents,

That we, Continental Illinois National Bank and Trust Company, an association organized under the Banking Laws of the United States, as principal, and Fidelity and Deposit Company of Maryland as surety, are held and firmly bound unto The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the property of said Debtor, Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the General Mortgage 4% Gold Bonds of the Debtor, Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds, Series A, of the Debtor, Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Thirty-Year 4½% Convertible Gold Bonds of the Debtor, Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids and Northern Railway Company Consolidated First Mortgage 5% Bonds, James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James R. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana Railroad Company First Mortgage 4½% Bonds, (said Debtor, Trustees, and members of Protective Committees being hereinafter referred to as "appellees"), in the sum of Two Hundred Fifty Dollars ($250.00), to be paid to the said appellees, their heirs, executors, administrators, successors or assigns, for the payment of which, well and truly to be made, we bind our elves, our and each of our heirs, repre-

sentatives, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 12th day of December, 1933.

Whereas, lately at a hearing in the United States District Court for the Northern District of Illinois, Eastern Division, in a proceeding in bankruptcy pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, in the matter of The Chicago, Rock Island and Pacific Railway Company, Debtor, an injunctional order was made and entered on November 22, 1933, restraining and enjoining Continental Illinois National Bank and Trust Company of Chicago from converting, selling, or otherwise disposing of the collateral held by it as security for the promissory notes of the Debtor, or any part thereof, until further order of the Court, and said Continental Illinois National Bank and Trust Company of Chicago, appearing in said cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court to make and enter said injunctional order, and not generally, has taken a separate appeal from said injunctional order to the United States Circuit Court of Appeals for the Seventh Circuit.

Now, Therefore, the condition of the above obligations is such, that if said Continental Illinois National Bank and Trust Company of Chicago shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation shall be void, otherwise to remain in full force and effect.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
By (Illegible Signature)
Vice President.

(Seal)

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By R. G. STANTEN,
Its Agent & Attorney-in-fact.

(Seal)

Approved:

.....
Judge.

(Endorsed) * * Bond on Appeal of the Continental Illinois National Bank and Trust Company of Chicago. Filed Dec. 12, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5115) * *

It is ordered by the court that the appeal bond of the appellant, in the sum of Two Hundred and Fifty Dollars, filed in this cause this day, be, and the same is hereby approved.

And afterwards, to wit: On the tenth day of January, 1934, the following further proceedings were had and entered of record, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5115) * *

ORDER.

Upon motion of David F. Rosenthal, one of the counsel for Continental Illinois National Bank and Trust Company of Chicago, and for good cause shown, it is hereby

Ordered that the time within which the said Continental Illinois National Bank and Trust Company of Chicago shall file its transcript of record in this court on the above entitled appeal, be, and the same hereby is, extended to and including February 13, 1934.

EVAN A. EVANS,
Circuit Judge.

Dated: January 10, 1934.

(Endorsed) * * Order. Filed Jan. 10, 1934.

United States of America, } ss.

The President of the United States, To The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor, to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds—Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to an order of said court allowing an appeal filed in the Clerk's Office of the said Court, wherein Continental Illinois National Bank and Trust Company of Chicago is appellant and you are appellees to show cause, if any there be, why the order rendered against the said appellant as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Evan A. Evans, Judge of the Circuit Court of Appeals of the United States, this 12th day of

December, in the year of our Lord one thousand nine hundred and thirty-three.

EVAN A. EVANS,
Judge.

Service of the within citation and receipt of a copy thereof is hereby acknowledged this 15 day of December, 1933.

MARCUS B. BELL,
WM. F. DICKINSON,
W. F. PETER,
Counsel for The Chicago, Rock Island and Pacific Railway Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

CADWALADER, WICKERSHAM & TAFT,
Counsel for the Protective Committee of the Debtor's Thirty-Year 4½% Convertible Gold Bonds.

ALEXANDER & GREEN,
Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.

ROOT, CLARK, BUCKNER & BALLANTINE,
Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and the Debtor's Secured 4½% Gold Bonds.

WHITE & CASE,
Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

HORNBLOWER, MILLER, MILLER & BOSTON,
Counsel for the Protective Committee of the Burlington, Cedar Rapids & Northern Railway Company Consolidated 5% Gold Bonds.

(Endorsed) Citation. Filed Dec. 18, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
The Chicago, Rock Island and Pacific Railway Company,
Debtor.

The Chase National Bank of the City of New York,
Appellant,
vs.
The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of all the property of said Railway Company, *et al.*,
Appellees.

No. 5116.

NOTICE.

To: Marcus L. Bell, Esq., 25 Broad Street, New York City, Counsel for The Chicago, Rock Island and Pacific Railway Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

Root, Clark, Buckner & Ballantine, Esqs., 31 Nassau Street, New York City, Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and the Debtor's Secured 4½% Gold Bonds.

Cadwalader, Wickersham & Taft, Esqs., 4 Wall Street, New York City, Counsel for the Protective Committee of the Debtor's Thirty-Year 4½% Convertible Gold Bonds.

White & Case, Esqs., 14 Wall Street, New York City, Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

Alexander & Green, Esqs., 120 Broadway, New York City, Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.

Hornblower, Miller, Miller & Boston, Esqs., 15 Broad Street, New York City, Counsel for the Protective Committee of the Burlington, Cedar Rapids & Northern Railway Company Consolidated 5% Gold Bonds.

You Are Hereby Notified that on Tuesday, December 12, 1933, at 9:30 o'clock A. M., or as soon thereafter as counsel may be heard, we shall appeal before the United States Circuit Court of Appeals for the Seventh Circuit, in the Federal Building, Chicago, Illinois, specially and solely for the purpose of presenting the petition of The Chase National Bank of the City of New York for an appeal to the said United States Circuit Court of Appeals for the Seventh Circuit from the injunctional order entered herein on November 22, 1933, by Judge James A. Wilkerson restraining and enjoining The Chase National Bank of the City of New York from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory note of the Debtor, or any part thereof, until further order of the Court, and not generally, and shall ask the Court to enter an order allowing an appeal in accordance with said petition.

RUSHMORE, BISBEE AND STERN,
Attorneys for The Chase National Bank of the City of New York, appearing specially and solely for the purpose of objecting to and contesting the jurisdiction of the court over said bank, and not generally, and of presenting the said petition for appeal, and not generally.

December 9, 1933.

Service of the above notice of appeal together with receipt

of a copy thereof is hereby accepted and acknowledged this 9th day of December, 1933.

MARCUS L. BELL,
WM. F. DICKINSON,
W. F. PETER,
Counsel for The Chicago, Rock Island and Pacific Railway Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

ROOT, CLARK, BUCKNER & BALLANTINE,
Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and the Debtor's Secured 4½% Gold Bonds.

CADWALADER, WICKERSHAM & TAFT,
Counsel for the Protective Committee of the Debtor's Thirty-Year 4½% Convertible Gold Bonds.

WHITE & CASE,
Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

ALEXANDER & GREEN,
Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.

HORNBLOWER, MILLER, MILLER & BOSTON,
Counsel for the Protective Committee of the Burlington, Cedar Rapids & Northern Railway Company Consolidated 5% Gold Bonds.

(Endorsed) * * Notice. Filed Dec. 12, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5116) * *

PETITION FOR ALLOWANCE OF APPEAL.

To the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Your petitioner, The Chase National Bank of the City of New York, deeming itself aggrieved by the injunctional order of the United States District Court for the Northern District of Illinois, Eastern Division, made and entered by the Honorable James H. Wilkerson, one of the Judges thereof, on the 22nd day of November, 1933, restraining and enjoining The Chase National Bank of the City of New York from converting, selling, or otherwise disposing of the collateral held by it as security for the promissory note of the Debtor, or any part thereof, until the further order of said United States District Court, files this, its petition, addressed to the discretion of this Honorable Court, for leave to appeal in matter of law from said injunctional order of said United States District Court.

In support of this petition your petitioner respectfully represents that on the 7th day of June, A. D. 1933, the Debtor filed its petition under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, setting forth that it was without funds to pay its obligations as they matured, and that it desired to effect a plan of reorganization pursuant to said Section. The Court thereupon entered an order approving said petition and directing the Debtor to manage and operate its railroad until the further order of the Court. Thereafter, on the 26th day of September, A. D. 1933, the said Debtor filed its petition for Order No. 15, alleging that it was indebted upon certain notes to the Reconstruction Finance Corporation and to five banks, including your petitioner, designated in said petition; that all of said notes were secured by large amounts of collateral in the possession of the Reconstruction Finance Corporation and said banks and that interest would become due upon one of said notes held by the Reconstruction Finance Corporation on October 1, 1933. The petitioner asked instructions of the Court as to payment of said interest and that the Court enjoin and restrain the holders of all of said collateral notes from selling and converting said collateral.

Your petitioner further represents that it filed its special appearance for the sole purpose of objecting to and contesting the jurisdiction of the District Court over it in the matter of said petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by it. The District Court, nevertheless, on November 22, 1933, entered its order pursuant to said petition restraining and enjoining your petitioner from converting, selling, or otherwise disposing of the collateral held by it as security for the promissory note of the Debtor, or any part thereof, until the further order of said District Court.

The present proceeding involves the interpretation of Section 77 of Chapter VIII, of the Acts of Congress relating to bankruptcy, added by an act approved March 3, 1933, as to whether said Section authorizes and empowers a Bankruptcy Court in a proceeding under said Section to summarily enjoin the sale of collateral security in the possession of creditors of the Debtor, particularly when such creditors are not parties to the proceeding, and have not been served with process therein.

Your petitioner refers to the assignment of errors filed by it simultaneously with this petition, setting forth the errors made by the Court below, and giving the grounds for this appeal, and makes said assignment of errors a part hereof.

Wherefore, your petitioner prays that it may be allowed in the discretion of this Honorable Court to appeal in matter of law herein, that the prayer of said petition be granted and a citation be issued directed to the Debtor; to Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor, to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids

& Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds, commanding them to appear before the United States Circuit Court of Appeals for the Seventh Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record and proceedings in said proceeding, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Seventh Circuit.

And your petitioner prays that the Court fix the amount of the bond which petitioner shall give on said appeal.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, *Petitioner,*

By RUSHMORE, BISBEE & STERN,

Attorneys for The Chase National Bank of the City of New York, appearing specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said Bank, and not generally, and of prosecuting an appeal from said injunctional order, and not generally.

Dated: December 12, 1933.

(Endorsed) Petition for Allowance of Appeal. Filed Dec. 12, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5116) * *

ASSIGNMENT OF ERRORS.

Comes Now The Chase National Bank of the City of New York, having appeared in the above entitled cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said bank in the matter of the petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by said bank, and not gen-

erally, and now further appearing specially and solely for the purpose of taking a separate appeal from the injunctional order entered herein on November 22, 1933, by the Honorable James H. Wilkerson, Judge of the United States District Court for the Northern District of Illinois, restraining and enjoining The Chase National Bank of the City of New York from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory note of the Debtor, or any part thereof, until further order of said Court, and not generally, and files the following assignment of errors upon which it will rely in the prosecution of its appeal:

1. The Court erred in entering the injunctional order of November 22, 1933, purporting to restrain and enjoin The Chase National Bank of the City of New York from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory note of the Debtor, or any part thereof, until further order of said Court.

2. The Court erred in holding that it had jurisdiction over the person of The Chase National Bank of the City of New York.

3. The Court erred in holding that it possessed jurisdiction to enter said injunctional order of November 22, 1933, purporting to restrain and enjoin The Chase National Bank of the City of New York from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory note of the Debtor, or any part thereof, until further order of said Court.

4. The Court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the petition of the Debtor for Order No. 15 are true and accurate.

5. The Court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the affidavit of Dwight S. Beebe, verified September 25, 1933, and filed herein on September 26, 1933, are true and accurate.

6. The Court erred in finding that a sale of the collateral held by The Chase National Bank of the City of New York, or any part thereof, would hinder, impede, obstruct, delay and in effect prevent the orderly preparation and consummation of the plan of reorganization of the trust estate.

7. The Court erred in finding that it is necessary for the enforcement of the provisions of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy that The Chase National Bank of the City of New York be enjoined

and restrained from selling or disposing of the collateral held by it as security for the promissory note of the Debtor, or any part thereof, pending the preparation and consummation of a plan of reorganization.

8. The Court erred in not requiring, as a condition precedent to the entry of said injunctional order, a bond conditioned upon the payment of such costs and damages as may be incurred by The Chase National Bank of the City of New York if found to have been wrongfully enjoined or restrained by said order.

9. The Court erred in not holding that Section 77 of Chapter VIII of the Bankruptcy Act, as amended, enacted March 3, 1933, if construed so as to authorize the issuance of the injunctional order from which this appeal is prayed, is unconstitutional and void as a taking of property of The Chase National Bank of the City of New York without due process of law in violation of the Constitution of the United States, and more particularly the Fifth Amendment thereto.

10. Section 77 of Chapter VIII of the Bankruptcy Act, as amended, as construed by the court below, and the issuance of the injunctional order appealed from, deprives The Chase National Bank of the City of New York of its property without due process of law, in violation of the Constitution of the United States, and more particularly the Fifth Amendment thereto.

Wherefore, appellant prays that the injunctional order entered herein on November 22, 1933, be reversed, and that said injunction be dissolved; and that such other and further relief may be given this appellant as to this Honorable Court may seem just and proper.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
by RUSHMORE, BISBEE AND STERN,
Attorneys for The Chase National Bank of the City of New York, appearing specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said bank, and not generally, and of presenting the above petition for appeal, and not generally.

Dated, December 12, 1933.

(Endorsed) * * Assignment of Errors. Filed Dec. 12, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Louis FitzHenry, Circuit Judge.

* * (Caption—5116) * *

ORDER ALLOWING APPEAL.

The petition of The Chase National Bank of the City of New York, appearing herein specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said bank in the matter of the petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by said bank, and not generally, and of taking a separate appeal from the said injunctional order of November 22, 1933, and not generally, is hereby granted, and the appeal to the United States Circuit Court of Appeals for the Seventh Circuit is allowed upon the said The Chase National Bank of the City of New York giving bond as required by law in the sum of Two Hundred Fifty Dollars ($250.00).

It is further ordered that the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, prepare and certify a transcript of the record and proceedings herein, in accordance with the statutes and rules of the said District Court, and transmit the same to the said United States Circuit Court of Appeals for the Seventh Circuit.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

• • (Caption—5116) • •

BOND ON APPEAL OF THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK.

Know All Men by These Presents, That we, The Chase National Bank of the City of New York, an association organized under the Banking Laws of the United States, as principal, and American Surety Company of New York, as surety, are held and firmly bound unto The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the property of said Debtor, Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the General Mortgage 4% Gold Bonds of the Debtor, Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds, Series A, of the Debtor, Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Thirty-Year 4½% Convertible Gold Bonds of the Debtor, Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids and Northern Railway Company Consolidated First Mortgage 5% Bonds, James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James R. Trowbridge, constituting a Protective Committee for the St. Paul & Kanses City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana Railroad Company First Mortgage 4½% Bonds, (said Debtor, Trustees, and members of Protective Committees being hereinafter referred to as "appellees"), in the sum of Two Hundred Fifty Dollars ($250.00), to be paid to the said appellees, their heirs, executors, administrators, successors or assigns, for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, representatives, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 7th day of December, 1933.

Whereas, lately at a hearing in the United States District Court for the Northern District of Illinois, Eastern Division, in a proceeding in bankruptcy pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, in the matter of The Chicago, Rock Island and Pacific Railway Company, Debtor, an injunctional order was made and entered on November 22, 1933, restraining and enjoining The Chase National Bank of the City of New York from converting, selling, or otherwise disposing of the collateral held by it as security for the promissory note of the Debtor, or any part thereof, until further order of the Court, and said The Chase National Bank of the City of New York, appearing in said cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court to make and enter said injunctional order, and not generally, and further appearing specially and solely for the purpose of taking a separate appeal from said injunctional order of November 22, 1933, and not generally, has taken a separate appeal from said injunctional order to the United States Circuit Court of Appeals for the Seventh Circuit.

Now, Therefore, the condition of the above obligation is such, that if said The Chase National Bank of the City of New York shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation shall be void, otherwise to remain in full force and effect.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
By W. H. MOORHEAD,
Vice President.

(Seal)

AMERICAN SURETY COMPANY OF NEW YORK,
By B. H. DAVENPORT,
Resident Vice President.

(Seal)

778465-D

Attest:
M. BERG,
Resident Assistant Secretary.

Approved:

.....
Judge.

State of New York, } ss.:
County of New York, }

On this 7th day of December, 1933, before me personally appeared W. H. Moorhead, to me known, who being by me duly sworn, did depose and say: that he resides in Borough of Brooklyn, City of New York; that he is a Vice-President of The Chase National Bank of the City of New York, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

THOS. J. FLANAGAN,
(Seal) *Notary Public, Kings Co.*
Kings Co. Clks. No. 116, Reg. No. 4112.
Certificates filed in New York County.
N. Y. Co. Clks. No. 264, Reg. No. 4F140.
Commission expires March 30, 1934.
No. 7627, Series E.

State of New York, } ss.:
County of New York, }

I, Daniel E. Finn, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county, Do Hereby Certify That said Court is a Court of Record, having by law a seal; that Thos. J. Flanagan, whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument was at the time of taking the same a Notary Public acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the County of New York a certified copy of his appointment and qualification as Notary Public for the County of Kings with his autograph signature; that as such Notary Public, he was duly authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further, that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 7 day of Dec. 1933.

DANIEL E. FINN,
Clerk.

State of New York, }
County of New York, } ss.:

On this day of December, 1933, before me personally came known to me to be the Resident Vice-President of the American Surety Company of New York, the corporation described in and which executed the annexed bond of The Chase National Bank of the City of New York, as surety thereon, who being by me duly sworn, deposes and says that he resides in and that he is the Resident Vice-President of the American Surety Company of New York, and knows the corporate seal thereof; that said Company is duly and legally incorporated under the laws of the State of New York; that said Company has complied with the provisions of the Act of Congress of August 13, 1894, and as amended March 24, 1910, allowing certain croporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of The Chase National Bank of the City of New York is the corporate seal of the said American Surety Company of New York and was thereto affixed by order and authority of the Board of Trustees of said Company; and that he signed his name thereto by like order and authority as Resident Vice-President of said Company; and that he is acquainted with , and knows him to be the Resident Assistant Secretary of said Company; and that the signature of said subscribed to said bond is in the genuine handwriting of said and was thereto subscribed by order and authority of said Board of Trustees, and in the presence of said deponent; and that the assets of said Company, unincumbered and liable to execution, exceeds its claim, debts and liabilities, of every nature whatsoever, by more than the sum of Five Million Dollars ($5,000,000.00).

Sworn to, acknowledged before me and subscribed in my presence this day of December, 1933.

(Endorsed) * * Bond on Appeal of The Chase National Bank of the City of New York. Filed Dec. 12, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption 5116) * *

It is ordered by the court that the appeal bond of the appellant, in the sum of Two Hundred and Fifty Dollars, filed in this cause this day, be, and the same is hereby approved.

And afterwards, to wit: On the tenth day of January, 1934, the following further proceedings were had and entered of record, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5116) * *

ORDER.

Upon motion of Paul D. Miller, one of counsel for The Chase National Bank of the City of New York, and for good cause shown, it is hereby

Ordered that the time within which said The Chase National Bank of the City of New York shall file its transcript of record in this court on its appeal heretofore allowed in the above cause be, and the same hereby is, extended to and including February 13, 1934.

EVAN A. EVANS,
Circuit Judge.

Dated: January 10, 1934.

(Endorsed) * * Order Enlarging Time for Filing Transcript. Filed Jan. 10, 1934.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5116) * *

CITATION.

United States of America } ss.

The President of the United States To: The Chicago, Rock Island and Pacific Railway Company, Debtor: To: Frank O. Lawden, James E. Gorman, and Joseph B. Fleming, trustees of all the property of the Debtor; to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Chicago, Illinois, within 30 days from the date hereof, pursuant to an order allowing Appeal filed in the Clerk's office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein The Chase National Bank of the City of New York is Appellant and you are Appellees to show cause, if any there be, why the injunction and order rendered against the said Appellant as in the said order allowing Appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Judges of the Circuit Court of Appeals for the United States in and for the Seventh Circuit this 12th day of December, 1933.

EVAN A. EVANS,
Judge.

.....
Judge.

.....
Judge.

Service of the above citation is hereby acknowledged this 15 day of December, 1933.

MARCUS L. BELL,
WM. F. DICKINSON,
W. F. PETER,
Counsel for The Chicago, Rock Island and Pacific Railway Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

ROOT, CLARK, BUCKNER & BALLANTINE,
Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and the Debtor's Secured 4½% Gold Bonds.

CADWALADER, WICKERSHAM & TAFT,
Counsel for the Protective Committee of the Debtor's Thirty-Year 4½% Convertible Gold Bonds.

WHITE & CASE,
Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

ALEXANDER & GREEN,
Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.

HORNBLOWER, MILLER, MILLER & BOSTON,
Counsel for the Protective Committee of the Burlington, Cedar Rapids & Northern Railway Company Consolidated 5% Gold Bonds.

(Endorsed) * * Citation. Filed Dec. 18, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
The Chicago, Rock Island and Pacific Railway Company,
Debtor.

Mississippi Valley Trust Co.,
Appellant,
vs.
The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of all the property of said Railway Company, *et al.*,
Appellees.

No. 5117.

PETITION FOR ALLOWANCE OF APPEAL.

To the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Your petitioner, Mississippi Valley Trust Company, a corporation, deeming itself aggrieved by the injunctional order of the United States District Court for the Northern District of Illinois, Eastern Division, made and entered by the Honorable James H. Wilkerson, one of the Judges thereof, on the 22nd day of November, 1933, restraining and enjoining your petitioner from converting, selling or otherwise disposing of the collateral held by it as security for promissory notes of The Chicago, Rock Island and Pacific Railway Company, the Debtor in the above entitled proceeding, until the further order of said United States District Court, respectfully petitions your Honors for leave to appeal from said injunctional order of said United States District Court.

In support of this petition your petitioner respectfully represents that on the 7th day of June, A. D. 1933, the said

Debtor filed its petition under section 77 of chapter VIII of the Acts of Congress relating to bankruptcy, setting forth that it was without funds to pay its obligations as they matured, and that it desired to effect a plan of reorganization pursuant to said section. The Court thereupon entered an order approving said petition and directing the Debtor to manage and operate its railroad until the further order of the Court. Thereafter, on the 26th day of September, A. D. 1933, the said Debtor filed its petition for Order No. 15, alleging that it was indebted upon certain notes to the Mississippi Valley Trust Company and to five other creditors designated in said petition; that all of said notes were secured by large amounts of collateral in the possession of the Mississippi Valley Trust Company and said creditors. The petitioner asked that the Court enjoin and restrain the holders of all of said collateral notes from selling and converting said collateral.

Your petitioner further represents that it filed its special appearance for the sole purpose of objecting to and contesting the jurisdiction of the District Court over it in the matter of said petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by it. The District Court, nevertheless, on November 22, 1933, entered its order pursuant to said petition restraining and enjoining your petitioner from converting, selling or otherwise disposing of the collateral held by it as security for the promissory notes of the Debtor until the further order of said District Court.

The present proceeding involves the interpretation of section 77 of chapter VIII, of the Acts of Congress relating to bankruptcy added by an act approved March 3, 1933, as to whether said section authorizes and empowers the Court in a summary proceeding to enjoin the sale of collateral security in the possession of creditors of the Debtor.

Your petitioner also refers to the assignment of errors filed by it simultaneously with this petition, setting forth the errors made by the Court below, and giving the grounds for this appeal, and makes said assignment of errors a part hereof.

Wherefore, your petitioner prays that it may be allowed in the discretion of this Honorable Court to appeal in matter of law herein, that the prayer of said petition be granted and a citation be issued directed to Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor, to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis aand Robert H. Stenhouse, con-

stituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrell P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-year 4½% Convertible Gold Bonds; to Alfred H. Myers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds, commanding them to appear before the United States Circuit Court of Appeals for the Seventh Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record and proceedings in said proceeding, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Seventh Circuit.

And your petitioner prays that the Court fix the amount of the bond which petitioner shall give on said appeal.

MISSISSIPPI VALLEY TRUST COMPANY,
Petitioner,

By T. M. PIERCE,
MILTON R. STAHL, and
S. MAYNER WALLACE,
Attorneys for Mississippi Valley Trust Company.

T. M. PIERCE,
MILTON R. STAHL,
S. MAYNER WALLACE,
Solicitors and of Counsel.

(Endorsed) * * Petition for Allowance of Appeal. Filed Dec. 12, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5117) * *

ASSIGNMENT OF ERRORS.

Comes Now The Mississippi Valley Trust Company, (hereinafter sometimes referred to as "Bank"), having appeared in the above entitled cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court below over said bank in the matter of the petition of the Debtor for order No. 15 for an injunction against the sale of collateral held by said bank, and not generally, and now further appearing herein for the purpose of taking a separate appeal from the injunctional order entered herein on November 22, 1933, by the Honorable James H. Wilkerson, Judge of the United States District Court for the Northern District of Illinois, restraining and enjoining The Mississippi Valley Trust Company from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory notes of the Debtor, or any part thereof, until further order of said Court and files the following assignment of errors upon which it will rely in the prosecution of its appeal:

1. The Court erred in entering the injunctional order of November 22, 1933, purporting to restrain and enjoin the Mississippi Valley Trust Company from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory notes of the Debtor, or any part thereof, until further order of said Court.

2. The Court erred in holding that it had jurisdiction over the person of the Mississippi Valley Trust Company.

3. The Court erred in holding that it possessed jurisdiction to enter said injunctional order of November 22, 1933, purporting to restrain and enjoin the Mississippi Valley Trust Company from converting, selling, or otherwise disposing of the collateral held by said bank as security for the promissory notes of the Debtor, or any part thereof, until further order of said Court.

4. The Court erred in finding in its said injunctional order

of November 22, 1933, that the facts set forth in the petition of the Debtor for Order No. 15 are true and accurate.

5. The Court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the affidavit of Dwight S. Beebe, verified September 25, 1933, and filed herein on September 26, 1933, are true and accurate.

6. The Court erred in finding that a sale of the collateral held by the Mississippi Valley Trust Company, or any part thereof, would hinder, impede, obstruct, delay and in effect prevent the orderly preparation and consummation of the plan of reorganization of the trust estate.

7. The Court erred in finding that it is necessary for the enforcement of the provisions of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy that the Mississippi Valley Trust Company be enjoined and restrained from selling or disposing of the collateral held by it as security for the promissory notes of the Debtor, or any part thereof, pending the preparation and consummation of a plan of reorganization.

8. The Court erred in not requiring, as a condition precedent to the entry of said injunctional order, a bond conditioned upon the payment of such costs and damages as may be incurred by the Mississippi Valley Trust Company if found to have been wrongfully enjoined or restrained by said order.

9. The Court erred in not holding that a construction of Section 77 of Chapter 8 of the Acts of Congress passed March 3, 1933, relating to Bankruptcy, which would authorize the issuance of the injunctional order from which this appeal is prayed, would violate the Constitution of the United States, and more particularly the Fifth Amendment thereto, as depriving the Mississippi Valley Trust Company of its property without due process of law.

10. Section 77 of Chapter 8 of the Bankruptcy Laws of the United States, as construed by the court below, and its issuance of the injunctional order appealed from based upon said construction deprives the Mississippi Valley Trust Company of its property without due process of law, in violation of the Constitution of the United States, and more particularly of the Fifth Amendment thereto.

Wherefore, appellant prays that the injunctional order entered herein on November 22, 1933, be reversed, and that said injunction be dissolved; and that such other and further re-

lief may be given this appellant as to this Honorable Court may seem just and proper.

MISSISSIPPI VALLEY TRUST COMPANY,
By T. M. PIERCE,
MILTON R. STAHL, and
S. MAYNER WALLACE,
Attorneys for the Mississippi Valley Trust Company.

T. M. PIERCE,
MILTON R. STAHL,
S. MAYNER WALLACE,
Solicitors and of Counsel.

(Endorsed) * * Assignment of Error. Filed Dec. 12, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Louis FitzHenry, Circuit Judge.

* * (Caption—5117) * *

ORDER ALLOWING APPEAL.

The petition of the Mississippi Valley Trust Company, a corporation, appearing herein for the purpose of denying and objecting to the jurisdiction of the Court below over said corporation in the matter of the petition of the Debtor herein for Order No. 15 for an injunction against the sale of collateral held by said corporation, and for leave of this Court to take a separate appeal from the said injunctional order entered by the United States District Court on November 22, 1933, is hereby granted; and an appeal is hereby allowed to this Court from the injunctional order entered by the United States District Court for the Northern District of Illinois, Eastern Division, on November 22, 1933, restraining and enjoining said Mississippi Valley Trust Company from converting, selling or otherwise disposing of the collateral held by it as security for promissory notes of the Debtor herein, upon the said Mississippi Valley Trust Company giving bond as required by law in the sum of Two Hundred Fifty Dollars.

It Is Further Ordered that the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, prepare and certify a transcript of the record and proceedings herein, in accordance with the statutes and the rules of the said District Court, and transmit the same to the United States Circuit Court of Appeals for the Seventh Circuit.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5117) * *

BOND ON APPEAL OF THE MISSISSIPPI VALLEY TRUST COMPANY.

Know All Men By These Presents:

That we, Mississippi Valley Trust Company, a corporation, organized under the Banking Laws of the State of Missouri, as principal, and Fidelity and Deposit Company of Maryland as surety, are held and firmly bound unto The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the property of said Debtor, Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the General Mortgage 4% Gold Bonds of the Debtor, Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds, Series A, of the Debtor, Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Thirty-year 4½% Convertible Gold Bonds of the Debtor, Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids and Northern Railway Company Consolidated First Mortgage 5% Bonds, James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James R. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana Railroad Company First Mortgage 4½% Bonds, (said Debtor,

Trustees, and members of Protective Committees being hereinafter referred to as "appellees"), in the sum of Two Hundred Fifty Dollars ($250.00), to be paid to the said appellees, their heirs, executors, administrators, successors or assigns, for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, representatives, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 12th day of December, 1933.

Whereas, lately at a hearing in the United States District Court for the Northern District of Illinois, Eastern Division, in a proceeding in bankruptcy pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, in the matter of The Chicago, Rock Island and Pacific Railway Company, Debtor, an injunctional order was made and entered on November 22, 1933, restraining and enjoining Mississippi Valley Trust Company from converting, selling, or otherwise disposing of the collateral held by it as security for the promissory notes of the Debtor, or any part thereof, until further order of the Court, and said Mississippi Valley Trust Company appearing in said cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court to make and enter said injunctional order, and not generally, has taken a separate appeal from said injunctional order to the United States Circuit Court of Appeals for the Seventh Circuit.

Now, Therefore, the condition of the above obligation is such, that if said Mississippi Valley Trust Company shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation shall be void, otherwise to remain in full force and effect.

MISSISSIPPI VALLEY TRUST COMPANY,
By MILTON R. STAHL,
(Seal) *Vice-President.*

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By P. G. STANTERS,
(Seal) *Its Agent & Attorney-in-fact.*

Approved:

.....
Judge.

(Endorsed) • • Bond on Appeal of the Mississippi Valley Trust Company. Filed Dec. 12, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5117) * *

It is ordered by the court that the appeal bond of the appellant, in the sum of Two Hundred and Fifty Dollars, filed in this cause this day, be, and the same is hereby approved.

And afterwards, to wit: On the tenth day of January, 1934, the following further proceedings were had and entered of record, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5117) * *

ORDER.

Upon motion of S. Mayner Wallace, counsel for Mississippi Valley Trust Company, and for good cause shown, it is hereby

Ordered that the time within which the said Mississippi Valley Trust Company shall file its transcript of record in this court on the above entitled appeal, be, and the same hereby is, extended to and including February 13, 1934.

EVAN A. EVANS,
Circuit Judge.

Dated: January 10, 1934.

(Endorsed) * * Order. Filed Jan. 10, 1934.

United States of America, } ss.

The President of the United States, To: The Chicago Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor, to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds—Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to an order of said court allowing an appeal filed in the Clerk's Office of the said Court, wherein Mississippi Valley Trust Company is appellant, and you are appellees to show cause; if any there be, why the order rendered against the said appellant as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Evan A. Evans, Judge of the Circuit Court of Appeals of the United States, this 12th day of

December, in the year of our Lord one thousand nine hundred and thirty-three.

EVAN A. EVANS.

Service of the within citation and receipt of a copy thereof is hereby acknowledged this 15th day of December, 1933.

MARCUS L. BELL,
WM. F. DICKINSON,
W. F. PETER,
Counsel for The Chicago, Rock Island and Pacific Railway Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

ROOT, CLARK, BUCKNER & BALLANTINE,
Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and the Debtor's Secured 4½% Gold Bonds.

CADWALADER, WICKERSHAM & TAFT,
Counsel for the Protective Committee of the Debtor's Thirty-Year 4½% Convertible Gold Bonds.

WHITE & CASE,
Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

ALEXANDER & GREEN,
Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.

HORNBLOWER, MILLER, MILLER & BOSTON,
Counsel for the Protective Committee of the Burlington, Cedar Rapids & Northern Railway Company Consolidated 5% Gold Bonds.

(Endorsed) * * Citation. Filed Dec. 18, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
The Chicago, Rock Island and Pacific Railway Company,
Debtor.

Harris Trust & Savings Bank,
Appellant,
vs.
The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of all the property of said Railway Company, *et al.*,
Appellees.

No. 5118.

PETITION FOR ALLOWANCE OF APPEAL.

To the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Your petitioner, Harris Trust and Savings Bank, a corporation, deeming itself aggrieved by the injunctional order of the United States District Court for the Northern District of Illinois, Eastern Division, made and entered by the Honorable James H. Wilkerson, one of the Judges thereof, on the 22nd day of November, 1933, restraining and enjoining your petitioner from converting, selling or otherwise disposing of the collateral held by it as security for promissory notes of The Chicago, Rock Island and Pacific Railway Company, the Debtor in the above entitled proceeding, until the further order of said United States District Court, respectfully petitions your Honors for leave to appeal from said injunctional order of said United States District Court.

In support of this petition your petitioner respectfully represents that on the 7th day of June, A. D. 1933, the said Debtor filed its petition under section 77 of chapter VIII of the Acts of Congress relating to bankruptcy, setting forth

that it was without funds to pay its obligations as they matured, and that it desired to effect a plan of reorganization pursuant to said section. The Court thereupon entered an order approving said petition and directing the Debtor to manage and operate its railroad until the further order of the Court. Thereafter, on the 26th day of September, A. D. 1933, the said Debtor filed its petition for Order No. 15, alleging that it was indebted upon certain notes to Harris Trust and Savings Bank, to Reconstruction Finance Corporation and to four other banks designated in said petition; that all of said notes were secured by large amounts of collateral in the possession of Harris Trust and Savings Bank, Reconstruction Finance Corporation and the four other banks and that interest would become due upon one of said notes held by Harris Trust and Savings Bank on February 1, 1934. The petitioner asked instructions of the Court as to payment of said interest and that the Court enjoin and restrain the holders of all of said collateral notes from selling and converting said collateral.

Your petitioner further represents that it filed its special appearance for the sole purpose of objecting to and contesting the jurisdiction of the District Court over it in the matter of said petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by it. The District Court, nevertheless, on November 22, 1933, entered its order pursuant to said petition restraining and enjoining your petitioner from converting, selling or otherwise disposing of the collateral held by it as security for the promissory notes of the Debtor until the further order of said District Court.

The present proceeding involves the interpretation of section 77 of chapter VIII, of the Acts of Congress relating to bankruptcy added by an act approved March 3, 1933, as to whether said section authorizes and empowers the Court in a summary proceeding to enjoin the sale of collateral security in the possession of creditors of the Debtor.

Your petitioner also refers to the assignment of errors filed by it simultaneously with this petition, setting forth the errors made by the Court below, and giving the grounds for this appeal, and makes said assignment of errors a part hereof.

Wherefore, your petitioner prays that it may be allowed in the discretion of this Honorable Court to appeal in matter of law herein, that the prayer of said petition be granted and a citation be issued directed to Frank O. Lowden, James E.

Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor, to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds, commanding them to appear before the United States Circuit Court of Appeals for the Seventh Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record and proceedings in said proceeding, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Seventh Circuit.

And your petitioner prays that the Court fix the amount of the bond which petitioner shall give on said appeal.

HARRIS TRUST AND SAVINGS BANK,
Petitioner,

By PERRY M. CHADWICK,
Atttorneys for Harris Trust and Savings Bank, appearing specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said corporation, and not generally, and of prosecuting an appeal from said injunctional order, and not generally.

Dated December 12, 1933.

(Endorsed) * * Petition for Allowance of Appeal. Filed Dec. 12, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5118) * *

ASSIGNMENT OF ERRORS.

Comes now Harris Trust and Savings Bank, having appeared in the above entitled cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court over said Bank in the matter of the petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by said Bank, and not generally, and now further appearing herein for the purpose of taking a separate apppeal from the injunctional order entered herein on November 22, 1933, by the Honorable James H. Wilkerson, Judge of the United States District Court for the Northern District of Illinois, restraining and enjoining Harris Trust and Savings Bank from converting, selling, or otherwise disposing of the collateral held by said Bank as security for the promissory notes of the Debtor, or any part thereof, until further order of said Court and files the following assignment of errors upon which it will rely in the prosecution of its appeal:

1. The Court erred in entering the injunctional order of November 22, 1933, purporting to restrain and enjoin the Harris Trust and Savings Bank from converting, selling, or otherwise disposing of the collateral held by said Bank as security for the promissory notes of the Debtor, or any part thereof, until further order of said Court.

2. The Court erred in holding that it had jurisdiction over the person of the Harris Trust and Savings Bank.

3. The Court erred in holding that it possessed jurisdiction to enter said injunctional order of November 22, 1933, purporting to restrain and enjoin Harris Trust and Savings Bank from converting, selling, or otherwise disposing of the collateral held by said Bank as security for the promissory notes of the Debtor, or any part thereof, until further order of said Court.

4. The Court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the petition of the Debtor for Order No. 15 are true and accurate.

5. The Court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the affidavit of Dwight S. Beebe, verified September 25, 1933, and filed herein on September 26, 1933, are true and accurate.

6. The Court erred in finding that a sale of the collateral held by Harris Trust and Savings Bank, or any part thereof, would hinder, impede, obstruct, delay and in effect prevent the orderly preparation and consummation of the plan of reorganization of the trust estate.

7. The Court erred in finding that it is necessary for the enforcement of the provisions of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy that Harris Trust and Savings Bank be enjoined and restrained from selling or disposing of the collateral held by it as security for the promissory notes of the Debtor, or any part thereof, pending the preparation and consummation of a plan of reorganization.

8. The Court erred in not requiring, as a condition precedent to the entry of said injunctional order, a bond conditioned upon the payment of such costs and damages as may be incurred by the Harris Trust and Savings Bank if found to have been wrongfully enjoined or restrained by said order.

9. The Court erred in not holding that a construction of Section 77 of Chapter 8 of the Acts of Congress passed March 3, 1933, relating to Bankruptcy, which would authorize the issuance of the injunctional order from which this appeal is prayed, would violate the Constitution of the United States, and more particularly the Fifth Amendment thereto, as depriving the Harris Trust and Savings Bank of its property without due process of law.

10. Section 77 of Chapter VIII of the Bankruptcy Laws of the United States, as construed by the court below, and its issuance of the injunctional order appealed from based upon said construction deprives the Harris Trust and Savings Bank of its property without due process of law, in violation of the Constitution of the United States, and more particularly of the Fifth Amendment thereto.

Wherefore, appellant prays that the injunctional order entered herein on November 22, 1933, be reversed, and that said injunction be dissolved; and that such other and further relief may be given this appellant as to this Honorable Court may seem just and proper.

HARRIS TRUST AND SAVINGS BANK,
By PERRY M. CHADWICK,
Attorney for Harris Trust and Savings Bank.

(Endorsed) • • Assignment of Errors. Filed Dec. 12, 1933.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Louis FitzHenry, Circuit Judge.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5118) * *

ORDER ALLOWING APPEAL.

The petition of Harris Trust and Savings Bank, a corporation, appearing solely and specially for the purpose of denying and objecting to the jurisdiction of the Court over said corporation in the matter of the petition of the Debtor herein for Order No. 15 for an injunction against the sale of collateral held by said corporation, and not generally, and for leave of this Court to take a separate appeal from the said injunctional order entered by the United States District Court on November 22, 1933, and not generally, is hereby granted; and an appeal is hereby allowed to this Court from the injunctional order entered by the United States District Court for the Northern District of Illinois, Eastern Division, on November 22, 1933, restraining and enjoining said Harris Trust and Savings Bank from converting, selling or otherwise disposing of the collateral held by it as security for promissory notes of the Debtor herein, upon the said Harris Trust and Savings Bank giving bond as required by law in the sum of Two Hundred Fifty Dollars.

It Is Further Ordered that the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, prepare and certify a transcript of the record and proceedings herein, in accordance with the statutes and the rules of the said District Court, and transmit the same to the United States Circuit Court of Appeals for the Seventh Circuit.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5118) * *

BOND ON APPEAL OF HARRIS TRUST AND SAVINGS BANK.

Know All Men By These Presents:

That we, Harris Trust and Savings Bank, a corporation organized under the Banking Laws of the United States, as principal, and Hartford Accident and Indemnity Company, as surety, are held and firmly bound unto The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the property of said Debtor, Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the General Mortgage 4% Gold Bonds of the Debtor, Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds, Series A, of the Debtor, Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Thirty-Year 4½% Convertible Gold Bonds of the Debtor, Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids and Northern Railway Company Consolidated First Mortgage 5% Bonds, James G. Blaine, Frank J. Gordon, William V. Griffin, R. G. Page and James R. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana Railroad Company First Mortgage 4½% Bonds (said Debtor, Trustees, and members of Protective Committees being hereinafter referred to as "appellees"), in the sum of Two Hundred and Fifty Dollars ($250.00), to be paid to the said appellees, their heirs, executors, administrators, successors or assigns, for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, representatives, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 12 day of December, 1933.

Whereas, lately at a hearing in the United States District Court for the Northern District of Illinois, Eastern Division, in a proceeding in bankruptcy pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, in the matter of The Chicago, Rock Island and Pacific Railway Company, Debtor, an injunctional order was made and entered on November 22, 1933, restraining and enjoining Harris Trust and Savings Bank from converting, selling, or otherwise disposing of the collateral held by it as security for the promissory notes of the Debtor, or any part thereof, until further order of the Court, and said Harris Trust and Savings Bank, appearing in said cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court to make and enter said injunctional order, and not generally, has taken a separate appeal from said injunctional order to the United States Circuit Court of Appeals for the Seventh Circuit.

Now, Therefore, the condition of the above obligation is such, that if said Harris Trust and Savings Bank shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation shall be void, otherwise to remain in full force and effect.

HARRIS TRUST AND SAVINGS BANK,
By W. H. VANDERPLOEG
Asst. Vice President.

(Seal)

Attest:
C. TOMANN
Asst. Secretary.

HARTFORD ACCIDENT AND INDEMNITY COMPANY
By FRANK J. SONLENP
Attorney-in-fact.

(Seal)

Its _____

Approved:

_____
Judge.

(Endorsed) • • Bond on Appeal of Harris Trust and Savings Bank. Filed Dec. 12, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5118) * *

It is ordered by the court that the appeal bond of the appellant, in the sum of Two Hundred and Fifty Dollars, filed in this cause this day, be, and the same is hereby approved.

And afterwards, to wit: On the tenth day of January, 1934, the following further proceedings were had and entered of record, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5118) * *

ORDER.

Upon motion of Perry M. Chadwick, counsel for Harris Trust and Savings Bank, and for good cause shown, it is hereby

Ordered that the time within which the said Harris Trust and Savings Bank shall file its transcript of record in this court be, and the same hereby is, extended to and including February 13, 1934.

EVAN A. EVANS
Circuit Judge.

Dated: January 10, 1934.
PMC:N

(Endorsed) * * Order. Filed Jan. 10, 1934.

United States of America, } ss.

The President of the United States, To The Chicago Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor, to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, Constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds. Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to an order of said court allowing an appeal filed in the Clerk's Office of the said Court, wherein Harris Trust and Savings Bank, of Chicago, Illinois is appellant and you are appellees to show cause, if any there be, why the order rendered against the said appellant as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Evan A. Evans, Judge of the Circuit Court of Appeals of the United States, this 12th day

of December, in the year of our Lord one thousand nine hundred and thirty-three.

EVAN A. EVANS
Judge.

Service of the within citation and receipt of a copy thereof is hereby acknowledged this 15 day of December, 1933.

MARCUS L. BELL,
WM. F. DICKINSON,
W. F. PETER,
Counsel for The Chicago, Rock Island and Pacific Railway Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

CADWALADER, WICKERSHAM & TAFT,
Counsel for the Protective Committee of the Debtor's Thirty-Year 4½% Convertible Gold Bonds.

ALEXANDER & GREEN,
Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.

ROOT, CLARK, BUCKNER & BALLENTINE,
Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and the Debtor's Secured 4½% Gold Bonds.

WHITE & CASE,
Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

HORNBLOWER, MILLER, MILLER & BOSTON,
Counsel for the Protective Committee of the Burlington, Cedar Rapids & Northern Railway Company Consolidated 5% Gold Bonds.

(Endorsed): Citation. Filed Dec. 18, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of The Chicago, Rock Island and Pacific Railway Company, *Debtor.*	
The New York Trust Company, *Appellant,* *vs.* The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of all the property of said Railway Company, *et al.*, *Appellees.*	No. 5119.

PETITION OF THE NEW YORK TRUST COMPANY FOR ALLOWANCE OF APPEAL.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Your petitioner, The New York Trust Company, a corporation organized and existing under the laws of New York, deeming itself aggrieved by the injunctional order of the United States District Court for the Northern District of Illinois, Eastern Division, made and entered by the Honorable James H. Wilkerson, one of the Judges thereof, on the 22d day of November, 1933, restraining and enjoining your petitioner from converting, selling or otherwise disposing of the collateral held by it as security for promissory note of The Chicago, Rock Island and Pacific Railway Company, the Debtor in the above entitled proceeding, until the further order of said United States District Court, respectfully petitions your Honers for leave to appeal from said injunctional order of said United States District Court.

In support of this petition your petitioner respectfully represents that on the 7th day of June, A. D. 1933, the said Debtor filed its petition under section 77 of chapter VIII of the Acts of Congress relating to bankruptcy, setting forth that it was without funds to pay its obligations as they ma-

tured, and that it desired to effect a plan of reorganization pursuant to said section. The Court thereupon entered an order approving said petition and directing the Debtor to manage and operate its railroad until the further order of the Court. Thereafter, on the 26th day of September, A. D. 1933, the said Debtor filed its petition for Order No. 15, alleging that it was indebted upon certain notes to The New York Trust Company and to four other banks designated in said petition, and to the Reconstruction Finance Corporation; that all of said notes were secured by large amounts of collateral in the possession of The New York Trust Company and said banks and Reconstruction Finance Corporation, and that interest would become due upon one of said notes held by the Reconstruction Finance Corporation on October 1, 1933, and that a default in the payment of the interest on the Reconstruction Finance Corporation notes would amount to a default in each of the notes given the banks. The petitioner asked instructions of the Court as to payment of said interest and that the Court enjoin and restrain the holders of all of said collateral notes from selling and converting said collateral. Notice of the debtor's aforesaid application was received by your petitioner in the mail.

Your petitioner further represents that it filed its special appearance in the proceeding for the sole purpose of objecting to and contesting the jurisdiction of the District Court over it in the matter of said petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by it. The District Court, nevertheless, on November 22, 1933, entered its order pursuant to said petition restraining and enjoining your petitioner from converting, selling or otherwise disposing of the collateral held by it as security for the promissory notes of the Debtor until the further order of said District Court.

The present proceeding involves the interpretation of section 77 of chapter VIII, of the Acts of Congress relating to bankruptcy, added by an act approved March 3, 1933, as to whether said section authorizes and empowers the Court in a summary proceeding to enjoin the sale of collateral security in the possession of creditors of the Debtor.

Your petitioner also refers to the assignment of errors filed by it simultaneously with this petition, setting forth the errors made by the Court below, and giving the grounds for this appeal, and makes said assignment of errors a part hereof.

Wherefore, your petitioner prays that it may be allowed in the discretion of this Honorable Court to appeal in matter of law herein, that the prayer of said petition be granted and a citation be issued directed The Debtor and to Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor, to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds, commanding them to appear before the United States Circuit Court of Appeals for the Seventh Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record and proceedings in said proceeding, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Seventh Circuit.

And your petitioner prays that the Court fix the amount of the bond which petitioner shall give on said appeal.

THE NEW YORK TRUST COMPANY,
Petitioner.

SIMS, STRANSKY & BREWER
EDWIN W. SIMS
JAMES P. CAREY, JR.
Attorneys for The New York Trust Company.

Dated December 12, 1933.

(Endorsed) * * Petition of The New York Trust Company for Allowance of Appeal. Filed Dec. 12, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5119) * *

ASSIGNMENT OF ERRORS.

Comes Now the New York Trust Company, having appeared in the above cause in the court below specially and solely for the purpose of objecting to and contesting the jurisdiction of the District Court over said trust company in the matter of the petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by said trust company, and not generally, and now appearing for the purpose of taking a separate appeal from the injunctional order entered on November 22, 1933, by the Honorable James H. Wilkerson, Judge of the United States District Court for the Northern District of Illinois, restraining and enjoining The New York Trust Company from converting, selling, or otherwise disposing of the collateral held by said trust company as security for the promissory note of the Debtor, or any part thereof, until further order of said court, and files the following assignment of errors upon which it will rely in the prosecution of its appeal;

1. The District Court erred in entering the injunctional order of November 22, 1933, purporting to restrain and enjoin The New York Trust Company from converting, selling, or otherwise disposing of the collateral held by said trust company as security for the promissory note of the Debtor, or any part thereof, until further order of said court.

2. The District Court erred in holding that it had jurisdiction over the person of The New York Trust Company.

3. The District Court erred in holding that it possessed jurisdiction to enter said injunctional order of November 22, 1933, purporting to restrain and enjoin The New York Trust Company from converting, selling, or otherwise disposing of the collateral held by said trust company as security for the promissory note of the Debtor, or any part thereof, until further order of said court.

4. The District Court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the petition of the Debtor for Order No. 15 are true and accurate.

5. The District Court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the affidavit of Dwight S. Beebe, verified September 25, 1933, and filed in the proceeding below on September 26, 1933, are true and accurate.

6. The District Court erred in finding that a sale of the collateral held by The New York Trust Company, or any part thereof, would hinder, impede, obstruct, delay and in effect prevent the orderly preparation and consummation of the plan of reorganization of the trust estate.

7. The District Court erred in finding that it is necessary for the enforcement of the provisions of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy that The New York Trust Company be enjoined and restrained from selling or disposing of the collateral held by it as security for the promissory note of the Debtor, or any part thereof, pending the preparation and consummation of a plan of reorganization.

8. The District Court erred in not requiring, as a condition precedent to the entry of said injunctional order, a bond conditioned upon the payment of such costs and damages as may be incurred by The New York Trust Company if found to have been wrongfully enjoined or restrained by said order.

9. The District Court erred in not holding that a construction of Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, approved March 3, 1933, which would authorize the issuance of the injunctional order from which this appeal is prayed, would violate the Constitution of the United States, and more particularly the Fifth Amendment thereto, as depriving The New York Trust Company of its property without due process of law.

10. Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, approved March 3, 1933, as construed by the court below, and its issuance of the injunctional order appealed from based upon said construction, deprives The New York Trust Company of its property without due process of law, in violation of the Constitution of the United States, and more particularly of the Fifth Amendment thereto.

Wherefore, appellant prays that the injunctional order entered by the District Court for the Northern District of Illinois, on November 22, 1933, be reversed, and that said injunction be dissolved; and that such other and further re-

lief may be given this appellant as to this Honorable Court may seem just and proper.

THE NEW YORK TRUST COMPANY,
Appellant.

SIMS, STRANSKY & BREWER,
EDWIN W. SIMS and
JAMES P. CAREY, JR.
Attorneys for The New York Trust Company.

Dated, December 12, 1933.

(Endorsed): * * Assignment of Errors. Filed Dec. 12, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Louis FitzHenry, Circuit Judge.

* * (Caption—5119) * *

ORDED ALLOWING APPEAL OF THE NEW YORK TRUST COMPANY.

The petition of The New York Trust Company, a corporation, for leave of this court to take a separate appeal from the injunctional order entered on November 22, 1933, by the District Court of the United States for the Northern District of Illinois, in the matter of the Chicago, Rock Island and Pacific Railway Company, Debtor, having been presented and considered together with the assignment of errors filed therewith, and it appearing that due notice of this application has been given,

It Is Hereby Ordered that the petition of The New York Trust Company for an appeal is hereby granted, and an appeal is hereby allowed to this court from the injunctional order entered by the United States District Court for the Northern District of Illinois, Eastern Division, on November 22, 1933, restraining and enjoining said The New York Trust Company from converting, selling, or otherwise disposing of the collateral held by it as security for the promissory note

of the Debtor herein, upon the said The New York Trust Company giving bond as required by law in the sum of Two Hundred Fifty Dollars to be approved by the court within ..... days from the date of the entry of this order.

It Is Further Ordered that the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, prepare and certify a transcript of the record and proceedings in said court in accordance with the statutes and the rules of the said District Court, and transmit the same to this court, and that a citation issue in due form of law.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5119) * *

BOND ON APPEAL OF THE NEW YORK TRUST COMPANY.

Know All Men by These Presents, That we, The New York Trust Company, a corporation organized under the laws of the State of New York, as principal, and American Employers' Insurance Company, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with Home Office at Boston, Massachusetts, as surety, are held and firmly bound unto The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the property of said Debtor, Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the General Mortgage 4% Gold Bonds of the Debtor, Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds, Series A, of the Debtor, Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Thirty-Year 4½% Convertible Gold

Bonds of the Debtor, Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred. P. Hayward, Howard Greene, Wm. Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids and Northern Railway Company Consolidated First Mortgage 5% Bonds, James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James R. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana Railroad Company First Mortgage 4½% Bonds, (said Debtor, Trustees, and members of Protective Committee being hereinafter referred to as "appellees"), in the sum of Two Hundred Fifty Dollars ($250), to be paid to the said appellees, their heirs, executors, administrators, successors or assigns, for the payment of which, well and truly to be made, we bind ourselves, our and each of our representatives, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 9th day of December, 1933.

Whereas, lately at a hearing in the United States District Court for the Northern District of Illinois, Eastern Division, in a proceeding in bankruptcy pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, in the matter of The Chicago, Rock Island and Pacific Railway Company, Debtor, an injunctional order was made and entered on November 22, 1933, restraining and enjoining The New York Trust Company from converting, selling, or otherwise disposing of the collateral held by it as security for the promissory note of the Debtor, or any part thereof, until further order of the Court, and said The New York Trust Company appearing in said cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court to make and enter said injunctional order, and not generally, and further appearing specially and solely for the purpose of taking a separate appeal from said injunctional order of November 22, 1933, and not generally, has taken a separate appeal from said injunctional order to the United States Circuit Court of Appeals for the Seventh Circuit.

Now, Therefore, the condition of the above obligation is such, that if said The New York Trust Company shall prosecute its said appeal to effect, and answer all damages and

costs if it fail to make good its plea, then the above obligation shall be void, otherwise to remain in full force and effect.

THE NEW YORK TRUST COMPANY,
By J. MURRAY MITCHELL,
Vice President.

(Seal)

Attest:
M. STRAUSS,
Assistant Secretary.

AMERICAN EMPLOYERS' INSURANCE COMPANY,
By ELMER C. ANDERSON,
Attorney-in-fact.

(Seal)

State of New York, } ss.
County of New York. }

On this 9 day of December, 1933, before me personally appeared J. Murray Mitchell, to me known, who being by me duly sworn, did depose and say: that he resides in N. Y. City; that he is a Vice President of The New York Trust Company, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Sworn to before me this 9 day of December, 1933.

C. ROY MERRITT,
Notary Public, Westchester County.

(Seal)

Cert. filed in N. Y. Co. No. 1082, Reg. No. 4M667.
Commission expires March 30, 1934.

State of Illinois, } ss.
County of Cook. }

On this 9th day of December, 1933 before me, a Notary Public, within and for said County and State, personally appeared Elmer C. Anderson, to me personally known, who being duly sworn, upon oath did say that he is Attorney-in-fact of and for the American Employers' Insurance Company, a corporation of Boston, Mass., created, organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts; that the Corporate seal affixed to the fore-

going within instrument is the seal of the said Company; that the seal was affixed and the said instrument was executed by authority of its Board of Directors; and the said Elmer C. Anderson, did acknowledge that he executed the said instrument as the free act and deed of said Company.

BERNICE M. ZELINN,
(Seal) *Notary Public, Cook County.*

My commission expires 10-25-36.

(Endorsed) • • Bond on Appeal of the New York Trust Company. Filed Dec. 12, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

• • (Caption—5119) • •

It is ordered by the court that the appeal bond of the appellant, in the sum of Two Hundred and Fifty Dollars, filed in this cause this day, be, and the same is hereby approved.

And afterwards, to wit: On the tenth day of January, 1934, the following further proceedings were had and entered of record, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

• • (Caption—5119) • •

ORDER.

Upon motion of James P. Carey, JR., one of counsel for The New York Trust Company, and for good cause shown, it is hereby

Ordered that the time within which said The New York Trust Company shall file its transcript of record in this court on its appeal heretofore allowed in the above cause be, and the same hereby is, extended to and including February 13, 1934.

EVAN A. EVANS,
Circuit Judge.

Dated: January 10, 1934.

(Endorsed) • • Order Enlarging Time for Filing Transcript of Record. Filed Jan. 10, 1934.

United States of America, } ss.

The President of the United States, To The Chicago, Rock Island and Pacific Railway Company, Debtor; Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor, to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Rbert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhaus[illegible], John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds—Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to an order of said court allowing an appeal filed in the Clerk's Office of the said Court wherein The New York Trust Company is appellant, and you are appellees to show cause, if any there be, why the order rendered against the said appellant as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Evan A. Evans, Judge of the Circuit Court of Appeals of the United States, this 12th day of

December, in the year of our Lord one thousand nine hundred and thirty-three.

EVAN A. EVANS,
Judge.

Service of the within citation and receipt of a copy thereof is hereby acknowledged this 15 day of December, 1933.

MARCUS L. BELL,
WM. F. DICKINSON,
W. F. PETER,
Counsel for The Chicago, Rock Island and Pacific Railway Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

CADWALADER, WICKERSHAM & TAFT,
Counsel for the Protective Committee of the Debtor's Thirty-Year 4½% Convertible Gold Bonds.

ALEXANDER & GREEN,
Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.

ROOT, CLARK, BUCKNER & BALLANTINE,
Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and the Debtor's Secured 4½% Gold Bonds.

WHITE & CASE,
Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

HORNBLOWER, MILLER, MILLER & BOSTON,
Counsel for the Protective Committee of the Burlington, Cedar Rapids & Northern Railway Company Consolidated 5% Gold Bonds.

(Endorsed) * * Citation. Filed Dec. 18, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of The Chicago, Rock Island and Pacific Railway Company, Debtor.	
Reconstruction Finance Corporation, *Appellant,* *vs.* The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of all the property of said Railway Company, *et al.*, *Appellees.*	No. 5120.

PETITION FOR ALLOWANCE OF APPEAL.

To the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Your petitioner, Reconstruction Finance Corporation, a corporation, deeming itself aggrieved by the injunctional order of the United States District Court for the Northern District of Illinois, Eastern Division, made and entered by the Honorable James H. Wilkerson, one of the Judges thereof, on the 22d day of November, 1933, restraining and enjoining your petition from converting, selling or otherwise disposing of the collateral held by it as security for promissory notes of The Chicago, Rock Island and Pacific Railway Company, the Debtor in the above entitled proceeding, until the further order of said United States District Court, respectfully petitions your Honors for leave to appeal from said injunctional order of said United States District Court.

In support of this petition your petitioner respectfully rep-

resents that on the 7th day of June, A. D. 1933, the said Debtor filed its petition under section 77 of chapter VIII of the Acts of Congress relating to bankruptcy, setting forth that it was without funds to pay its obligations as they matured, and that it desired to effect a plan of reorganization pursuant to said section. The Court thereupon entered an order approving said petition and directing the Debtor to manage and operate its railroad until the further order of the Court. Thereafter, on the 26th day of September, A. D. 1933, the said Debtor filed its petition for Order No. 15, alleging that it was indebted upon certain notes to the Reconstruction Finance Corporation and to five banks designated in said petition; that all of said notes were secured by large amounts of collateral in the possession of the Reconstruction Finance Corporation and said banks and that interest would become due upon one of said notes held by the Reconstruction Finance Corporation on October 1, 1933. The petitioner asked instructions of the Court as to payment of said interest and that the Court enjoin and restrain the holders of all of said collateral notes from selling and converting said collateral, or any part thereof.

Your petitioner further represents that it filed its special appearance for the sole purpose of objecting to and contesting the jurisdiction of the District Court over it in the matter of said petition of the Debtor for Order No. 15 for an injunction against the sale of collateral held by it. The District Court, nevertheless, on November 22, 1933, entered its order pursuant to said petition restraining and enjoining your petitioner from converting, selling or otherwise disposing of the collateral held by it as security for the promissory notes of the Debtor or any part thereof until the further order of said District Court.

The present proceeding involves the interpretation of section 77 of chapter VIII, of the Acts of Congress relating to bankruptcy added by an act approved March 3, 1933, as to whether said section authorizes and empowers the Court in a summary proceeding to enjoin the sale of collateral security in the possession of creditors of the Debtor.

Your petitioner also refers to the assignment of errors filed by it simultaneously with this petition, setting forth the errors made by the Court below, and giving the grounds for this appeal, and makes said assignment of errors a part hereof.

Wherefore, your petitioner prays that it may be allowed

in the discretion of this Honorable Court to appeal in matter of law herein, that the prayer of said petition be granted and a citation be issued directed to Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor, to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds, commanding them to appear before the United States Circuit Court of Appeals for the Seventh Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record and proceedings in said proceeding, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Seventh Circuit.

And your petitioner prays that the Court fix the amount of the bond which petitioner shall give on said appeal.

RECONSTRUCTION FINANCE CORPORATION,
Petitioner,

By HOPKINS, STARR & GODMAN and
C. M. CLAY,
Attorneys for the Reconstruction Finance Corporation.

Dated December 12, 1933.

(Endorsed) * * Petition for Allowance of Appeal.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5120) * *

ASSIGNMENTS OF ERROR.

Comes Now Reconstruction Finance Corporation, a corporation, having appeared in the United States District Court for the Northern District of Illinois, Eastern Division, in the above cause specially and solely for the purpose of objecting to and contesting the jurisdiction of said District Court over said corporation in the matter of the petition of the Debtor for Order No. 15 for an injunction against the sale of certain collateral held by said corporation, and not generally, and now further appearing specially and solely for the purpose of taking a separate appeal from the injunctional order entered herein on November 22, 1933, by the Honorable James H. Wilkerson, Judge of the United States District Court for the Northern District of Illinois, Eastern Division, restraining and enjoining Reconstruction Finance Corporation from converting, selling or otherwise disposing of the collateral held by said corporation as security for certain promissory notes of the Debtor, or any part thereof, until further order of said Court, and not generally, and files the following assignments of error upon which it will rely in the prosecution of its appeal:

1. The Court erred in entering the injunctional order of November 22, 1933, purporting to restrain and enjoin Reconstruction Finance Corporation from converting, selling or otherwise disposing of the collateral held by said corporation as security for the promissory notes of the Debtor, or any part thereof, until further order of said Court.

2. The Court erred in holding that it had jurisdiction over the person of the Reconstruction Finance Corporation.

3. The Court erred in holding that it had jurisdiction to enter the injunctional order of November 22, 1933, purporting to restrain and enjoin Reconstruction Finance Corporation from converting, selling or otherwise disposing of the collateral held by said corporation as security for the promissory notes of the Debtor, or any part thereof, until further order of said Court.

4. The Court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the petition of the Debtor for Order No. 15 are true and accurate.

5. The Court erred in finding in its said injunctional order of November 22, 1933, that the facts set forth in the affidavit of Dwight S. Beebe, verified September 25, 1933, and filed herein September 26, 1933, are true and accurate.

6. The Court erred in considering or predicating its injunctional order of November 22, 1933, upon the affidavit of Dwight S. Beebe, verified September 25, 1933, and filed herein on September 26, 1933, and upon the facts set forth therein.

7. The Court erred in finding that a sale of the collateral held by Reconstruction Finance Corporation, or any part thereof, would hinder, impede, obstruct, delay and in effect prevent the orderly preparation and consummation of the plan of reorganization of the trust estate.

8. The Court erred in finding that it is necessary for the enforcement of the provisions of section 77 of chapter VIII of the Acts of Congress relating to bankruptcy that Reconstruction Finance Corporation be enjoined and restrained from selling and disposing of the collateral held by it as security for the promissory notes of the Debtor, or any part thereof, pending the preparation and consummation of a plan of reorganization.

9. The Court erred in not requiring, as a condition precedent to the entry of said injunctional order, a bond conditioned upon the payment of such costs and damages as may be incurred by Reconstruction Finance Corporation if found to have been wrongfully enjoined or restrained by said order.

10. The Court erred in finding that a sale of the collateral held by Reconstruction Finance Corporation as security for the promissory notes of the Debtor, or any part thereof, would be inconsistent with the purposes of section 77 of chapter VIII of the Acts of Congress relating to bankruptcy.

Wherefore, appellant prays that the injunctional order entered herein on November 22, 1933, be reversed, and that said injunction be dissolved; and that such other and further relief may be given this appellant as to this Honorable Court may seem just and proper.

RECONSTRUCTION FINANCE CORPORATION,
By HOPKINS, STARR & GODMAN and
C. M. CLAY,
Attorneys for Reconstruction Finance Corporation.

Dated December 12, 1933.

(Endorsed) * * Assignments of Error.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Louis FitzHenry, Circuit Judge.

* * (Caption—5120) * *

ORDER ALLOWING APPEAL.

The petition of the Reconstruction Finance Corporation, a corporation, appearing solely and specially for the purpose of denying and objecting to the jurisdiction of the Court over said corporation in the matter of the petition of the Debtor herein for Order No. 15 for an injunction against the sale of collateral held by said corporation, and not generally, and for leave of this Court to take a separate appeal from the said injunctional order entered by the United States District Court on November 22, 1933, and not generally, is hereby granted; and an appeal is hereby allowed to this Court from the injunctional order entered by the United States District Court for the Northern District of Illinois, Eastern Division, on November 22, 1933, restraining and enjoining said Reconstruction Finance Corporation from converting, selling or otherwise disposing of the collateral held by it as security for promissory notes of the Debtor herein, or any part thereof, upon the said Reconstruction Finance Corporation giving bond as required by law in the sum of Two Hundred Fifty Dollars.

It Is Further Ordered that the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, prepare and certify a transcript of the record and proceedings herein, in accordance with the statutes and the rules of the said District Court, and transmit the same to the United States Circuit Court of Appeals for the Seventh Circuit.

And afterwards, to wit: On the eighteenth day of December, 1933, the following further proceedings were had and entered of record, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS. Filed D 1933.

* * (Caption—5120) * *

BOND ON APPEAL OF RECONSTRUCTION FINANCE CORPORATION.

Know All Men by These Presents, That we, Reconstruction Finance Corporation, a corporation organized and existing under and pursuant to the laws of the United States of America, as principal, and The Fidelity and Casualty Company of New York, a New York Corporation, as surety, are held and firmly bound unto The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the property of said Debtor, Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the General Mortgage 4% Gold Bonds of the Debtor, Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds, Series A, of the Debtor, Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Thirty-Year 4½% Convertible Gold Bonds of the Debtor, Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids and Northern Railway Company Consolidated First Mortgage 5% Bonds, James G. Blaine, Frank M. Gordon, William V. Griffin, R. C. Page and James R. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana Railroad Company First Mortgage 4½% Bonds, (said Debtor, Trustees, and members of Protective Committees being hereinafter referred to as "appellees"), in the sum of Two Hundred Fifty Dollars ($250.00), to be paid to the said appellees, their heirs, executors, administrators, successors or assigns, for the payment of which, well and truly to be made, we bind ourselves, our and each of our representa-

tives, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 14th day of December, 1933.

Whereas, lately at a hearing in the United States District Court for the Northern District of Illinois, Eastern Division, in a proceeding in bankruptcy pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, in the matter of The Chicago, Rock Island and Pacific Railway Company, Debtor, an injunctional order was made and entered on November 22, 1933, restraining and enjoining the Reconstruction Finance Corporation from converting, selling, or otherwise disposing of the collateral held by it as security for the promissory notes of the Debtor, or any part thereof, until further order of the Court, and said Reconstruction Finance Corporation appearing in said cause specially and solely for the purpose of objecting to and contesting the jurisdiction of the Court to make and enter said injunctional order, and not generally, and further appearing specially and solely for the purpose of taking a separate appeal from said injunctional order of November 22, 1933, and not generally, having obtained from the United States Circuit Court of Appeals an order allowing a separate appeal to said United States Circuit Court of Appeals for the Seventh Circuit.

Now, Therefore, the condition of the above obligation is such, that if said Reconstruction Finance Corporation shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation shall be void, otherwise to remain in full force and effect.

RECONSTRUCTION FINANCE CORPORATION,
By JESSE H. JONES,
Chairman.

(Seal)

Attest:
W. R. COOKSEY,
Secretary.

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK,
By GEORGE A. GUFFIN,
Attorney.

(Seal)

Approved:

.....

United States of America,
District of Columbia. } ss.

On this 14th day of December, 1933 before me personally appeared Jesse H. Jones, to me personally known, who being by me duly sworn, did depose and say: that he is the Chairman of the Reconstruction Finance Corporation, the corporation described in and which executed the foregoing instrument, that he knows the seal of said corporation; and that the seal affixed to said instrument is the said corporate seal; that the seal was affixed and the said instrument was executed by authority of its Board of Directors.

RONALD H. ALLEN,
(Seal) *Notary Public, District of Columbia.*

My commission expires September 14, 1938.

No. 72098

District of
Columbia, } ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, the same being a Court of Record, having by law a seal, do hereby certify that Ronald H. Allen, before whom the annexed instrument in writing was executed, and whose name is subscribed thereto, was at the time of signing the same a Notary Public in and for said District, residing therein, duly commissioned and sworn, and authorized by the law of said District to take the acknowledgment and proof of deeds or conveyances of lands, tenements, or hereditaments, and other instruments in writing, to be recorded in said District, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to said instrument and impression of seal thereon are genuine.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said Court, at the City of Washington, D. C., the 15 day of Dec., A. D. 1933.

FRANK E. CUNNINGHAM,
(Seal) *Clerk.*

By CHAS. B. COFLIN,
Assistant Clerk.

United States of America, } ss.
District of Columbia. }

On this 15th day of December, 1933, before me personally appeared George A. Griffin, to me personally known, who being duly sworn on oath, did say; that he is Attorney of and for The Fidelity and Casualty Company of New York, a corporation of New York created, organized and existing under and by virtue of the laws of New York; that the corporate seal affixed to the foregoing within instrument is the seal of the said company; that the seal was affixed and the instrument was executed by authority of its Board of Directors; and that said George A. Griffin did acknowledge that he executed the said instrument as the free act and deed of said company.

MILDRED Y. ROBESON,
Notary Public, District of Columbia.

(Seal)

My commission expires June 25, 1935.

No. 72096

District of Columbia, } ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, the same being a Court of Record, having by law a seal, do hereby certify that Mildred Y. Robeson, before whom the annexed instrument in writing was executed, and whose name is subscribed thereto, was at the time of signing the same a Notary Public in and for said District, residing therein, duly commissioned and sworn, and authorized by the laws of said District to take the acknowledgment and proof of deeds or conveyances of lands, tenements, or hereditaments, and other instruments in writing, to be recorded in said District, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to said instrument and impression of seal thereon are genuine.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said Court, at the City of Washington, D. C., the 15 day of Dec., A. D. 1933.

FRANK E. CUNNINGHAM,
Clerk.

(Seal)

By CHAS. B. COFLIN,
Assistant Clerk.

(Endorsed) • • Bond on Appeal of Reconstruction Finance Corporation. Filed December 18, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5120) * *

It is ordered by the court that the appeal bond of the appellant, in the sum of Two Hundred and Fifty Dollars, filed in this cause this day, be, and the same is hereby approved.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—5120) * *

ORDER.

Upon motion of John L. Hopkins, Charles O. Parker and James A. Sprowl, counsel for Reconstruction Finance Corporation, and for good cause shown, it is hereby

Ordered that the time within which the said Reconstruction Finance Corporation shall file its transcript of record in this court be, and the same hereby is, extended to and including February 13, 1934.

EVAN E. EVANS,
Circuit Judge.

Dated: January 10, 1934.

(Endorsed) * * Order. Filed Jan. 10, 1934.

18. United States of America, } ss.

The President of the United States, To The Chicago, Rock Island and Pacific Railway Company, Debtor, Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor, to Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to Dwight S. Beebe, Merrel P. Callaway, Harry G. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone and Frederick W. Walker, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to Alfred H. Meyers, Milo W. Wilder, Jr., Sterling Pierson, Fred P. Hayward, Howard Greene, Wm. J. Lum and Edwin S. Hunt, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James G. Trowbridge, constituting a Protective Committee for the St. Paul & Kansas City Short Line Railroad Company First Mortgage 4½% Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Bonds. Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to an order of said court allowing an appeal filed in the Clerk's Office of the said Court wherein Reconstruction Finance Corporation is appellant and you are appellees to show cause, if any there be, why the order rendered against the said appellant as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Evan A. Evans, United States Circuit Judge, and Judge of the Circuit Court of Appeals of the

United States, this 12th day of December, in the year of our Lord one thousand nine hundred and thirty-three.

EVAN A. EVANS,
Judge.

Service of the within citation and receipt of a copy thereof is hereby acknowledged this 15 day of December, 1933.

MARCUS L. BELL,
WM. F. DICKINSON,
W. F. PETER,
Counsel for The Chicago, Rock Island and Pacific Railway Company, Debtor, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of the Debtor.

CADWALADER, WICKERSHAM & TAFT,
Counsel for the Protective Committee of the Debtor's Thirty-Year 4½% Convertible Gold Bonds.

ALEXANDER & GREEN,
Counsel for the Protective Committee of the Debtor's General Mortgage 4% Gold Bonds.

ROOT, CLARK, BUCKNER & BALLANTINE,
Counsel for the Protective Committee of the Debtor's First and Refunding Mortgage 4% Gold Bonds and the Debtor's Secured 4½% Gold Bonds.

WHITE & CASE,
Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% First Mortgage Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

HORNBLOWER, MILLER, MILLER & BOSTON,
Counsel for the Protective Committee of the Burlington, Cedar Rapids & Northern Railway Company Consolidated 5% Gold Bonds.

(Endorsed) * * Citation. Filed Dec. 18, 1933.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

Filed M... 1934.

For the Seventh Circuit.

Continental Illinois National Bank and Trust Company of Chicago, *Appellant*, *vs.* The Chicago, Rock Island and Pacific Railway Company, Debtor, *et al.*, *Appellees.*	Nos. 5115, 5159.
The Chase National Bank of the City of New York, *Appellant*, *vs.* The Chicago, Rock Island and Pacific Railway Company, Debtor, *et al.*, *Appellees.*	Nos. 5116, 5160.
Mississippi Valley Trust Company, *Appellant*, *vs.* The Chicago, Rock Island and Pacific Railway Company, Debtor, *et al.*, *Appellees.*	Nos. 5117, 5161.
Harris Trust and Savings Bank, *Appellant*, *vs.* The Chicago, Rock Island and Pacific Railway Company, Debtor, *et al.*, *Appellees.*	Nos. 5118, 5162.
The New York Trust Company, *Appellant*, *vs.* The Chicago, Rock Island and Pacific Railway Company, Debtor, *et al.*, *Appellees.*	Nos. 5119, 5163.

Reconstruction Finance Corporation, *Appellant,* *vs.* The Chicago, Rock Island and Pacific Railway Company, Debtor, *et al.,* *Appellees.*	Nos. 5120, 5164.

NOTICE.

To: Marcus L. Bell, Esq., Wm. F. Dickinson, Esq., W. F. Peter, Esq., 25 Broad Street, New York City. Counsel for The Chicago, Rock Island and Pacific Railway Company, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of said railway company.

Elihu Root, Jr., Esq., and Wilkie Bushby, 31 Nassau Street, New York City. Counsel for the Protective Committee of The Chicago, Rock Island and Pacific Railway Company's First and Refunding 4% Gold Bonds and the Secured 4½% Gold Bonds.

William Lloyd Kitchel, Esq., 40 Wall Street, New York City. Counsel for the Protective Committee of The Chicago, Rock Island and Pacific Railway Company's Thirty-Year 4½% Convertible Gold Bonds.

White & Case, Esqs., 14 Wall Street, New York City. Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

James H. Mackintosh and Edw. W. Bourne, Esqs., 120 Broadway, New York City. Counsel for Protective Committee of The Chicago, Rock Island and Pacific Railway Company's General Mortgage 4% Gold Bonds.

Edward C. Bailly, Esq., 15 Broad Street, New York City. Counsel for Protective Committee of the Burlington, Cedar Rapids and Northern Railway Company's Consolidated 5% Gold Bonds.

Please Take Notice that we shall on Wednesday, March 7, 1934, at the hour of 11:00 o'clock A. M., Central Standard Time, or as soon thereafter as counsel may be heard, appear before the Judges of the Circuit Court of Appeals for the Seventh Circuit, in Chambers in the Federal Building, Chicago, Illinois, and shall then and there present the motion of each of the appellants in the above numbered causes to consolidate their respective appeals for hearing, and shall also

present a motion of said appellants for an order directing the Clerk of said court to cause to be printed one consolidated transcript of record in all of said appeals upon which said appeals shall be heard and determined, at which time and place you may appear if you see fit.

A copy of each of said Motions and of the proposed Orders thereon are herewith served upon you.

Chicago, Illinois,
March 2, 1934.

ISAAC H. MAYER; HERBERT A. FRIEDLICH;
DAVID ROSENTHAL
Counsel for Continental Illinois National Bank and Trust Company of Chicago.

PAUL D. MILLER
Counsel for The Chase National Bank of the City of New York.

T. M. PIERCE; MILTON R. STAHL; S. MAYNER WALLACE
Counsel for Mississippi Valley Trust Company.

PERRY M. CHADWICK
Counsel for Harris Trust & Savings Bank.

EDWIN W. SIMS; JAMES P. CAREY, JR.
Counsel for The New York Trust Company.

JOHN L. HOPKINS; CHARLES O. PARKER;
JAMES A. SPROWL
Counsel for Reconstruction Finance Corporation.

Received a copy of the foregoing notice and of the above mentioned motions and proposed orders, this 5th day of March, 1934.

United States of America
State of New York } ss.:
County of New York

THOMAS J. FLANAGAN, being duly sworn, says that he is of the age of 21 years and upwards; that on the 5th day of March, 1934, he served a copy of the foregoing notice and of the above mentioned motions and proposed orders on Marcus L. Bell, Esq., Wm. F. Dickinson, Esq., W. F. Peter, Esq., 25 Broad Street, New York City, Counsel for The Chicago, Rock Island and Pacific Railway Company, and for Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of all the property of said railway company, in the above en-

titled action, at their offices, No. 25 Broad Street, Borough of Manhattan, City of New York, by delivering a copy of the same to and leaving the same with a person in charge of said office, said Counsel being absent therefrom at the time of said service.

THOMAS J. FLANAGAN.

Sworn to before me this 5th day of March, 1934.

T. J. POL

(Seal) *Notary Public, New York County.*
N. Y. Co. Clk's No. 263, Reg. No. 5P359.
Commission expires March 30, 1935.

Counsel for The Chicago Rock Island and Pacific Railway Company and for Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of all the property of said railway company.

ELIHU ROOT, JR. and WILKIE BUSHBY
Counsel for the Protective Committee of The Chicago Rock Island and Pacific Railway Company's First and Refunding 4% Gold Bonds and the Secured 4½% Gold Bonds.

W. LLOYD KITCHEL
Counsel for the Protective Committee of The Chicago, Rock Island and Pacific Railway Company's Thirty-Year 4½% Convertible Gold Bonds.

WHITE & CASE
Counsel for the Protective Committee of the St. Paul & Kansas City Short Line 4½% Gold Bonds and Rock Island, Arkansas & Louisiana First Mortgage 4½% Gold Bonds.

JAMES H. MACKINTOSH and
EDWARD W. BOURNE
Counsel for Protective Committee of The Chicago, Rock Island and Pacific Railway Company's General Mortgage 4% Gold Bonds.

EDWARD C. BAILLY
Counsel for Protective Committee of the Burlington, Cedar Rapids and Northern Railway Company's Consolidated 5% Gold Bonds.

(Endorsed) • • Notice. Filed Mar. 7, 1934.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS. Filed Mar 1934.

• • (Captions—Nos. 5115 and 5159) • •

MOTION TO CONSOLIDATE APPEALS.

Now Comes Continental Illinois National Bank and Trust Company of Chicago, appellant in each of the above entitled appeals, and moves the court to enter an order consolidating said appeals for hearing.

In support of this motion appellant states the following facts of record:

That the parties in each of the above entitled appeals are the same; that the same order of the United States District Court is complained of in each of the said appeals; that the assignments of error in each of said appeals are the same; that one of said appeals, number 5159, was allowed by the United States District Court, while the other, number 5115, was allowed by the Circuit Court of Appeals; that the transcripts of record filed in said appeals are substantially identical.

Wherefore, this appellant asks that an order be entered consolidating the above entitled appeals for hearing.

ISAAC H. MAYER; HERBERT A. FRIEDLICH; DAVID ROSENTHAL
Attorneys for Continental Illinois National Bank and Trust Company of Chicago.

(Endorsed): • • Motion to Consolidate Appeals. Filed Mar. 7, 1934.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS. Entered 1934.

Before: Hon. Samuel Alschuler, Circuit Judge.

• • (Captions—Nos. 5115 and 5159) • •

ORDER CONSOLIDATING APPEALS NUMBER 5115 AND NUMBER 5159.

It Appearing To The Court that there is such identity in the above entitled causes as to the questions involved and as to the transcript of the record that they may be advantageously heard together:

It Is, Therefore, Ordered that the said cases be consolidated for hearing and be heard together and that the appellants be permitted to file one brief and one reply brief and the appellees be permitted to file one brief, such briefs on both sides to cover both of said cases.

Mar. 7, IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Captions—5116 and 5160) * *

MOTION TO CONSOLIDATE APPEALS.

Now Comes The Chase National Bank of the City of New York, appellant in each of the above entitled appeals, and moves the Court to enter an order consolidating said appeals for hearing.

In support of this motion appellant states the following facts of record:

That the parties in each of the above entitled appeals are the same; that the same order of the United States District Court is complained of in each of the said appeals; that the assignments of error in each of said appeals are the same, that one of said appeals, number 5160, was allowed by the United States District Court, while the other, number 5116, was allowed by the Circuit Court of Appeals; that the transcripts of record filed in said appeals are substantially identical.

Wherefore, this appellant asks that an order be entered consolidating the above entitled appeals for hearing.

PAUL D. MILLER,
Attorneys for The Chase National Bank of the City of New York.

(Endorsed) * * Motion to Consolidate Appeals. Filed Mar. 7, 1934.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

Before: Hon. Samuel Alschuler, Circuit Judge.

* * (Captions—5116 and 5160) * *

ORDER CONSOLIDATING APPEALS NUMBER 5116 AND NUMBER 5160.

It Appearing To The Court that there is such identity in the above entitled causes as to the questions involved and as to the transcript of the record that they may be advantageously heard together:

It Is, Therefore, Ordered that the said cases be consolidated for hearing and be heard together, and that the appellants be permitted to file one brief and one reply brief and the appellees be permitted to file one brief, such briefs on both sides to cover both of said cases.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Captions—5117 and 5161) * *

MOTION TO CONSOLIDATE APPEALS.

Now Comes Mississippi Valley Trust Company, appellant in each of the above entitled appeals, and moves the Court to enter an order consolidating said appeals for hearing.

In support of this motion appellant states the following facts of record:

That the parties in each of the above entitled appeals are the same; that the same order of the United States District Court is complained of in each of the said appeals; that the assignments of error in each of said appeals are the same; that one of said appeals, number 5161, was allowed by the United States District Court, while the other, number 5117, was allowed by the Circuit Court of Appeals; that the transcripts of record filed in said appeals are substantially identical.

Wherefore, this appellant asks that an order be entered consolidating the above entitled appeals for hearing.

T. M. PIERCE,
MILTON R. STAHL,
S. MAYNER WALLACE,
Attorneys for Mississippi Valley Trust Company.

(Endorsed) * * Motion to Consolidate Appeals. Filed Mar. 7, 1934.

Mar. 7. IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

Before: Hon. Samuel Alschuler, Circuit Judge.

* * (Captions 5117 and 5161) * *

ORDER CONSOLIDATING APPEALS NUMBER 5117 AND NUMBER 5161.

It Appearing To The Court that there is such identity in the above entitled causes as to the questions involved and as to the transcript of the record that they may be advantageously heard together:

It Is, Therefore, Ordered that the said cases be consolidated for hearing and be heard together, and that the appellants be permitted to file one brief and one reply brief and the appellees be permitted to file one brief, such briefs on both sides to cover both of said cases.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS. Filed Mar 1934.

• • (Captions—5118 and 5162) • •

MOTION TO CONSOLIDATE APPEALS.

Now Comes Harris Trust and Savings Bank, appellant in each of the above entitled appeals, and moves the court to enter an order consolidating said appeals for hearing.

In support of this motion appellant states the following facts of record:

That the parties in each of the above entitled appeals are the same; that the same order of the United States District Court is complained of in each of the said appeals; that the assignments of error in each of said appeals are the same; that one of said appeals, number 5162, was allowed by the United States District Court, while the other, number 5118, was allowed by the Circuit Court of Appeals; that the transcripts of record filed in said appeals are substantially identical.

Wherefore, this appellant asks that an order be entered consolidating the above entitled appeals for hearing.

PERRY M. CHADWICK,
Attorneys for Harris Trust and Savings Bank.

(Endorsed) • • Motion to Consolidate Appeals. Filed Mar. 7, 1934.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS. Entered 1934.

Before: Hon. Samuel Alschuler, Circuit Judge.

• • (Captions—5118 and 5162) • •

ORDER CONSOLIDATING APPEALS NUMBER 5118 AND NUMBER 5162.

It Appearing To The Court that there is such identity in the above entitled causes as to the questions involved and as to the transcript of the record that they may be advantageously heard together:

It Is, Therefore, Ordered that the said cases be consolidated for hearing and be heard together, and that the appel-

lants be permitted to file one brief and one reply brief and the appellees be permitted to file one brief, such briefs on both sides to cover both of said cases.

Mar. 7. IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Captions—5119 and 5163) * * *

MOTION TO CONSOLIDATE APPEALS.

Now Comes The New York Trust Company, appellant in each of the above entitled appeals, and moves the Court to enter an order consolidating said appeals for hearing.

In support of this motion appellant states the following facts of record:

That the parties in each of the above entitled appeals are the same; that the same order of the United States District Court is complained of in each of the said appeals; that the assignments of error in each of said appeals are the same; that one of said appeals, number 5163, was allowed by the United States District Court, while the other, number 5119, was allowed by the Circuit Court of Appeals; that the transcripts of record filed in said appeals are substantially identical.

Wherefore, this appellant asks that an order be entered consolidating the above entitled appeals for hearing.

EDWIN W. SIMS,
JAMES P. CAREY, JR.,
Attorneys for The New York Trust Company.

(Endorsed) * * Motion to Consolidate Appeals. Filed Mar. 7, 1934.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS. Entered M 1934.

Before: Hon. Samuel Alschuler, Circuit Judge.

* * (Captions—5119 and 5163) * *

ORDER CONSOLIDATING APPEALS NUMBER 5119 AND NUMBER 5163.

It Appearing To The Court that there is such identity in the above entitled causes as to the questions involved and as to the transcript of the record that they may be advantageously heard together:

It Is, Therefore, Ordered that the said cases be consolidated for hearing and be heard together, and that the appellants be permitted to file one brief and one reply brief and the appellees be permitted to file one brief, such briefs on both sides to cover both of said cases.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS. Filed M 1934.

* * (Captions—5120 and 5164) * *

MOTION TO CONSOLIDATE APPEALS.

Now Comes Reconstruction Finance Corporation, appellant in each of the above entitled appeals, and moves the Court to enter an order consolidating said appeals for hearing.

In support of this motion appellant states the following facts of record:

That the parties in each of the above entitled appeals are the same; that the same order of the United States District Court is complained of in each of the said appeals; that the assignments of error in each of said appeals are the same; that one of said appeals, number 5164, was allowed by the United States District Court, while the other, number 5120, was allowed by the Circuit Court of Appeals; that the transcripts of record filed in said appeals are substantially identical.

Wherefore, this appellant asks that an order be entered consolidating the above entitled appeals for hearing.

JOHN L. HOPKINS,
CHARLES O. PARKER,
JAMES A. SPRAWL,
Attorneys for Reconstruction Finance Corporation.

(Endorsed) • • Motion to Consolidate Appeals. Filed Mar. 7, 1934.

d Mar. 7. IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

Before: Hon. Samuel Alschuler, Circuit Judge.

• • Captions—5120 and 5164) • •

ORDER CONSOLIDATING APPEALS NUMBER 5120 AND NUMBER 5164.

It Appearing To The Court that there is such identity in the above entitled causes as to the questions involved and as to the transcript of the record that they may be advantageously heard together:

It Is, Therefore, Ordered that the said cases be consolidated for hearing and be heard together, and that the appellants be permitted to file one brief and one reply brief and the appellees be permitted to file one brief, such briefs on both sides to cover both of said cases.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS. Filed Ma 1934.

* * (Captions—5115, 5159; 5116, 5160; 5117, 5161; 5118, 5162; 5119, 5163; 5120, 5164) * *

MOTION.

Now come Continental Illinois National Bank and Trust Company of Chicago, by Isaac H. Mayer, Herbert A. Friedlich and David F. Rosenthal, its counsel; The Chase National Bank of the City of New York, by Paul D. Miller, its counsel; Mississippi Valley Trust Company, by T. M. Pierce, Milton R. Stahl and S. Mayner Wallace, its counsel; Harris Trust and Savings Bank, by Perry M. Chadwick, its counsel; The New York Trust Company, by Edwin W. Sims and James P. Carey, Jr., its counsel, and Reconstruction Finance Corporation, by John L. Hopkins, Charles O. Parker and James A. Sprowl, its counsel, appellants in the above numbered causes respectively, each appearing separately, and move the court for an order directing the Clerk to cause to be printed a single consolidated transcript of record in all of the above-numbered cases, and in support of this motion, these appellants represent to the court as follows:

All of said twelve appeals complain solely of a single order entered by the United States District Court for the Northern District of Illinois enjoining the sale or disposition of certain collateral separately held by each of the appellants as security for loans made by each of them to The Chicago, Rock Island and Pacific Railway Company; that six of said appeals were allowed by the said United States District Court and six were allowed by this court, each of said appellants having perfected an appeal in each court as a precautionary measure, because of their uncertainty as to whether the cause below constituted a controversy or a proceeding within the meaning of the Bankruptcy Act; that transcripts of record have been filed in each of the twelve appeals; that said transcript of record in the six appeals allowed by the United States District Court are in all respects identical; that the transcripts of record filed in the six appeals allowed by this court are in all respects identical; that the transcripts of record filed in the appeals allowed by this court differ from the transcripts filed in the appeals allowed by the District Court only in the omission from the former of the appeal papers filed in and the appeal orders entered by the District Court; that the proceedings in all of said twelve appeals will be

simplified and expedited by the entry of the order requested.

Wherefore, this court is requested to enter an order for a consolidated printed record because the said twelve appeals are substantially identical, involve the same questions and are based on substantially identical records, and therefore it will be convenient, economical and expeditious to hear all of said appeals on a single printed record.

ISAAC H. MAYER; HERBERT A. FRIEDLICH; DAVID ROSENTHAL,
Counsel for Continental Illinois National Bank and Trust Company of Chicago.

PAUL D. MILLER,
Counsel for The Chase National Bank of the City of New York.

T. M. PIERCE; MILTON R. STAHL; S. MAYNER WLLACE,
Counsel for Mississippi Valley Trust Company.

PERRY M. CHADWICK,
Counsel for Harris Trust & Savings Bank.

EDWIN W. SIMS; JAMES P. CAREY, JR.,
Counsel for The New York Trust Company.

JOHN L. HOPKINS; CHARLES O. PARKER; JAMES A. SPROWL,
Counsel for Reconstruction Finance Corporation.

(Endorsed) * * Motion. Filed Mar. 7, 1934.

d Mar. 7. IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Captions—5115, 5159; 5116, 5160; 5117, 5161; 5118, 5162; 5119, 5163; 5120, 5164) * *

Wednesday, March 7, 1934.

Before: Hon. Samuel Alschuler, Circuit Judge.

ORDER.

This matter coming on to be heard on the several motions of Continental Illinois National Bank and Trust Company

of Chicago, The Chase National Bank of the City of New York, Mississippi Valley Trust Company, Harris Trust and Savings Bank, The New York Trust Company and Reconstruction Finance Corporation for an order regarding the printing of the transcripts of record in the twelve above entitled appeals now pending in this court, and it appearing to the court that there is substantial identity in all of said appeals as to the questions involved and as to the transcripts of the record, and that it will be sufficient for the purposes of the consideration of all questions by this court that instead of printing the transcript of record in each one of the appeals the Clerk of this court shall cause a single consolidated transcript of record to be printed and that the consolidated transcript of record so printed stand as the printed record in all of the cases:

It Is Therefore Ordered that the Clerk print fifty (50) copies of a single consolidated transcript of record in all of the above entitled cases, which consolidated record shall contain (a) all matters of every kind included in any of the twelve transcripts of record filed in said cases, (not however printing more than once any matter which appears in more than one of said twelve transcripts of record), and (b) all petitions for appeal, orders allowing appeal, appeal bonds, orders approving appeal bonds, assignments of error, entered by or filed with this court; all orders of consolidation entered by this court with regard to any of said cases, all citations and all orders of this court enlarging the time for filing the transcript of record on any of said appeals, and also this order and any other document filed in, or order entered, in this court in said causes, and that such consolidated transcript of record shall bear the title and number of each of the asid twelve appeals on its cover and shall stand as the printed transcript of record in all of said appeals.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered 1 to 301, inclusive, contain a true copy of the printed record, printed under my supervision and filed on the second day of April 1934, on which the following entitled causes were heard and determined:

In the Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
Debtor.

Nos. 5115 and 5159
CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY,
Appellant,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,
Appellees.

Nos. 5116 and 5160
THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
Appellant,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,
Appellees.

Nos. 5117 and 5161
MISSISSIPPI VALLEY TRUST COMPANY,
Appellant,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,
Appellees.

Nos. 5118 and 5162
HARRIS TRUST & SAVINGS BANK,
Appellant,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,
Appellees.

Nos. 5119 and 5163

THE NEW YORK TRUST COMPANY,

Appellant,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,

Appellees.

Nos. 5120 and 5164

RECONSTRUCTION FINANACE CORPORATION,

Appellant,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,

Appellees.

October Term, 1933, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 15th day of October, A. D. 1934.

FREDERICK G. CAMPBELL,

(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room in the City of Chicago, in said Seventh Circuit, on the third day of October, 1933, of the October Term, in the year of our Lord one thousand nine hundred and thirty-three, and of our Independence the one hundred and fifty-eighth.

In the Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY,
Nos. 5115 and 5159 *vs.*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
Nos. 5116 and 5160 *vs.*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,

MISSISSIPPI VALLEY TRUST COMPANY,
Nos. 5117 and 5161 *vs.*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,

HARRIS TRUST & SAVINGS BANK,
Nos. 5118 and 5162 *vs.*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,

THE NEW YORK TRUST COMPANY,
Nos. 5119 and 5163 *vs.*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,

RECONSTRUCTION FINANCE CORPORATION,
Nos. 5120 and 5164 *vs.*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,

Appeals from District Court of the United States for the Northern District of Illinois, Eastern Division.

And afterwards, to-wit: On the sixth day of April 1934, there was filed in the office of the clerk of this court, the petition of Lowden, et al., as Trustees for the Debtor, to be made parties appellees, which said Petition is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
vs. *Appellant,*
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor, *et al.*,
Appellees. } Nos. 5115, 5159.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
vs. *Appellant,*
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor, *et al.*,
Appellees. } Nos. 5116, 5160.

MISSISSIPPI VALLEY TRUST COMPANY,
vs. *Appellant,*
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor, *et al.*,
Appellees. } Nos. 5117, 5161.

HARRIS TRUST AND SAVINGS BANK,
vs. *Appellant,*
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor, *et al.*,
Appellees. } Nos. 5118, 5162.

THE NEW YORK TRUST COMPANY,
vs. *Appellant,*
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor, *et al.*,
Appellees. } Nos. 5119, 5163.

RECONSTRUCTION FINANCE CORPORATION,
vs. *Appellant,*
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor, *et al.*,
Appellees. } Nos. 5120, 5164.

Now come Frank O. Lowden, James E. Gorman and Joseph B. Fleming, as Trustees of the Estate of The Chicago, Rock Island and Pacific Railway Company, and respectfully show to the Court:

1. That by order of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered November 22, 1933 in a proceeding pending therein

entitled, "In the Matter of The Chicago, Rock Island and Pacific Railway Company, Debtor, No. 53209, in proceedings for the reorganization of a railroad", the said Frank O. Lowden, James E. Gorman and Joseph B. Fleming were temporarily appointed Trustees of all and singular the railroads, lands, properties, estates, rights and franchises of whatever character and wheresoever situated of The Chicago, Rock Island and Pacific Railway Company, Debtor, which appointment became effective as of the beginning of business on December 1, 1933; and that by virtue of said appointment and in accordance with the terms of said order, the said Trustees became vested with all of the title to the estate of the said Debtor, and, subject to the control of said Court and consistently with the provisions of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, and General Orders in bankruptcy, as amended, were empowered to exercise all of the powers of Trustees appointed pursuant to Section 44, or any other section of the Acts of Congress relating to bankruptcy.

That, thereafter, said Trustees, and each of them, duly qualified as Trustee by giving proper bonds with sureties for the faithful performance of their official duties, and said bonds were approved by said District Court of the United States, by its order entered in said proceeding on December 1, 1933. That said appointment was made permanent by order of said Court entered December 28, 1933. That since December 1, 1933 said Trustees have been, and are now, in possession of the properties comprising the estate of The Chicago, Rock Island and Pacific Railway Company, and that all of the above-mentioned orders of said District Court of the United States have remained, and are now, in full force and effect.

2. That said Trustees, petitioners herein, by virtue of their appointment as Trustees of the estate of The Chicago, Rock Island and Pacific Railway Company, which corporation is one of the appellees in each of the above-entitled appeals, have an interest in the controversy or proceeding involved in each of said appeals, and by reason thereof desire to become parties to each of said appeals, with all rights appertaining thereto.

Wherefore, petitioners pray that this Court will enter its order in the consolidated cause making the said Frank O. Lowden, James E. Gorman and Joseph B. Fleming Trustees of the estate of The Chicago, Rock Island and Pacific Rail-

way Company, parties in each of the said appeals, and as appellees therein, with all rights thereunto appertaining.

Respectfully submitted,

FRANK O. LOWDEN,
JAMES E. GORMAN,
JOSEPH B. FLEMING,
Trustees.

M. L. BELL,
W. F. DICKINSON,
W. F. PETER,
1025 LaSalle Street Station,
Chicago, Illinois,
Solicitors for Trustees.

State of Illinois, } ss.
County of Cook, }

JAMES E. GORMAN, being duly sworn, deposes and says that he is one of the Trustees whose names are subscribed to the foregoing petition; that he has read the said petition and knows the contents thereof; that the same is true to the best of his knowledge and belief, and that the said petition is filed in good faith.

JAMES E. GORMAN.

Subscribed and sworn to before me this 5th day of April, 1934.

W. J. GEDL,
(Seal) *Notary Public in and for the State and County aforesaid.*

Endorsed: Filed April 6, 1934. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the sixth day of April 1934, the following further proceedings were had and entered of records, to-wit:

Friday, April 6, 1934.

Court met pursuant to adjournment and was opened by proclamation.
Before:

Hon. Samuel Alschuler, Circuit Judge.

IN THE MATTER OF
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

Nos. 5115 and 5159
CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*

Nos. 5116 and 5160
THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*

Nos. 5117 and 5161
MISSISSIPPI VALLEY TRUST COMPANY,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*

Nos. 5118 and 5162
HARRIS TRUST & SAVINGS BANK,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*

Nos. 5119 and 5163
THE NEW YORK TRUST COMPANY,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*

Nos. 5120 and 5164
RECONSTRUCTION FINANCE CORPORATION,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This matter coming on to be heard on the petition of Frank O. Lowden, James E. Gorman and Joseph B. Fleming, as Trustees of the Estate of The Chicago, Rock Island and Pa-

cific Railway Company praying to be made parties, as appellees in each of the twelve above-entitled appeals now pending in this court, and it appearing to the court that the said Trustees have by virtue of their offices an interest in the subject matter of the controversy or proceeding involved in each of said appeals and are entitled to be heard with respect thereto; It is therefore ordered that Frank O. Lowden, James E. Gorman and Joseph B. Fleming, as Trustees of the Estate of The Chicago, Rock Island and Pacific Railway Company, be, and they are hereby made parties in each of the twelve above-entitled appeals, as parties appellee therein, with all rights thereunto appertaining.

And afterwards, to-wit: On the twenty-eighth day of May 1934, the following further proceedings were had and entered of record, to-wit:

Monday, May 28, 1934.

Court met pursuant to adjournment and was opened by proclamation.
Before:

Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.

In the Matter of
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor.

CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY,

5115-5159 vs.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor, *et al.*

} Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. Herbert A. Friedlich, counsel for appellant, and by Mr. Marcus L. Bell, Mr. Elihu Root, Jr., and Mr. Edward C. Bailly, counsel for appellees, and the court having heard the same takes this matter under advisement.

In the Matter of
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,

5116-5160 *vs.*

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor, *et al.*

Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. James P. Carey, Jr., counsel for appellant, and by Mr. Marcus L. Bell, Mr. Elihu Root, Jr., and Mr. Edward C. Bailly, counsel for appellees, and the court having heard the same takes this matter under advisement.

In the Matter of
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor.

MISSISSIPPI VALLEY TRUST COMPANY,

5117-5161 *vs.*

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor, *et al.*

Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. James P. Carey, Jr., counsel for appellant, and by Mr. Marcus L. Bell, Mr. Elihu Root, Jr., and Mr. Edward C. Bailly, counsel for appellees, and the court having heard the same takes this matter under advisement.

In the Matter of
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor.

HARRIS TRUST & SAVINGS BANK,

5118-5162 *vs.*

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor, *et al.*

Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. Herbert A. Friedlich, counsel for appellant, and by Mr. Marcus L. Bell, Mr. Elihu Root, Jr., and Mr. Edward C. Bailly, counsel for appellees, and the court having heard the same takes this matter under advisement.

In the Matter of
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor.

THE NEW YORK TRUST COMPANY,
5119-5163 *vs.*
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor, *et al.*

Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. James P. Carey, Jr., counsel for appellant, and by Mr. Marcus L. Bell, Mr. Elihu Root, Jr., and Mr. Edward C. Bailly, counsel for appellees, and the court having heard the same takes this matters under advisement.

In the Matter of
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor.

RECONSTRUCTION FINANCE CORPORATION,
5120-5164 *vs.*
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor, *et al.*

Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. C. M. Clay, counsel for appellant, and by Mr. Marcus L. Bell, Mr. Elihu Root Jr., and Mr. Edward C. Bailly, counsel for appellees, and the court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the twenty-third day of July, 1934, there was filed in the office of the clerk of this Court, the Opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.
October Term, 1933, April Session, 1934.

In The Matter Of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
Debtor.

Nos. 5115 and 5159.
CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY,
Appellant,
v.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,
Appellees.

Nos. 5116 and 5160.
THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
Appellant,
v.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,
Appellees.

Nos. 5117 and 5161.
MISSISSIPPI VALLEY TRUST COMPANY,
Appellant,
v.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,
Appellees.

Nos. 5118 and 5162.
HARRIS TRUST & SAVINGS BANK,
Appellant,
v.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,
Appellees.

Nos. 5119 and 5163.
THE NEW YORK TRUST COMPANY,
Appellant,
v.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,
Appellees.

Nos. 5120 and 5164.
RECONSTRUCTION FINANCE CORPORATION,
Appellant,
v.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,
Appellees.

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

July 23, 1934.

Before ALSCHULER, EVANS, and SPARKS, *Circuit Judges.*

EVANS, *Circuit Judge.* These appeals (allowed both by the

District Court and this court) are from an order of the District Court enjoining appellants from selling collateral which appellee, C. R. I. & P. Ry. Co., had pledged as security for loans made to it by appellants. All controverted issues concern the validity and propriety of the order restraining the sale of the pledged collateral and are directed to:

First, the District Court's jurisdiction as a court of bankruptcy, before the 1933 amendment, to issue such an injunction;

Second, its power to so enjoin under (new) Sec. 77 of the Bankruptcy Act, as an incident to reorganization;

Third, its power to enjoin pledgees, specially appearing, some of whom are without, and some within, the court's territorial jurisdiction;

Fourth, the sufficiency of the allegations of threatened injury in the petition to invoke equity's protection, and

Fifth, the constitutionality of Sec. 77 if it be construed to authorize such an injunctional order.

The Facts.

Participants in Litigation Below: On June 7, 1933, the C. R. I. & P. Ry. Co., appellee (hereinafter called debtor), an Illinois and Iowa corporation, filed a petition in the Northern District of Illinois, to propose and effectuate a plan of reorganization under Sec. 77 of the Bankruptcy Act as amended March 3, 1933. Later, nine wholly owned subsidiary railroad companies, whose properties were under long term leases to debtor, were permitted to join with the principal debtor in its petition for reorganization. The trustees of the road were made party appellees to this appeal by order of this court entered April 6, 1934.

The appellants, the pledgees, are five banks (two Illinois, two New York, and one Missouri, corporations) and the Reconstruction Finance Corporation. All appellants filed special appearances and affidavits in support thereof, in the proceedings below, to contest the court's jurisidction over them and over the property pledged. In addition, the Illinois Banks and the R. F. C. challenged the jurisdiction of the District Court to grant the restraining order in the summary proceeding.

Other entities participating in the proceedings below were five protective committees, representing various funded is-

sues of debtor, who filed answers to several of debtor's petitions, and who filed a petition asking for appointment of trustees, but none of which protective committees had formally become parties to the proceedings although they expressed an intention of later asking leave to intervene.

Facts Set Forth in the Pleadings: Debtor's initial petition of June 7 alleged its inability to meet interest and principal payments of $2,259,710.85, maturing in the interim of June 27 to July 15, and principal obligations of $144,303,700, maturing March and April 1, 1934. The court approved the petition on June 7 and directed the continued operation of the railroad. A pertinent provision of the order is set forth verbatim.*

Debtor's petition of June 26 set forth in detail its obligations shortly maturing. The court ordered, on the debtor's recommendation, that interest due the R. F. C. be paid so as to prevent acceleration of maturity, pursuant to a tri-partite arrangement of debtor's other loans from appellant banks. Certain other items of interest were ordered paid, but payment of interest on the debtor's General Mortgage 4% Gold Bonds was ordered deferred, there being a six months' grace period. On July 26 another petition was approved by the court ordering interest paid the R. F. C. and deferring interest on bonds of a subsidiary guaranteed by debtor, pending the period of grace. On August 28, debtor filed another petition of similar import, which was approved. A protective committee filed an answer to the petition of the debtor, protesting the payment of interest to the R. F. C. when interest on the bond issue remained in default.

On September 26, the petition was filed which evoked the order appealed from. The debtor alleged it owed the following notes maturing March 1, 1934, secured by the desig-

* "(8) That all persons, firms and corporations, whatsoever, and wheresoever situated, located or domiciled, hereby are restrained and enjoined from interfering with, attaching, garnisheeing, levying upon, and enforcing liens upon, or in any manner whatsoever disturbing any portion of the assets, goods, money, railroads, properties, and premises belonging to, or in the possession of the Debtor, or from taking possession of, or in any way interfering with the same, or any part thereof, or from interfering in any manner to prevent the discharge by the Debtor of its duties in the operation of said property and business, under the orders of this Court, or from bringing any new suits or actions, accruing prior to this date, in or before any Court from which an appeal, or proceedings to review, can be taken only upon the filing of an appeal bond, as a jurisdictional or mandatory requirement."

nated amount of collateral consisting of the obligations of itself and subsidiaries:

Owed to		Collateral***
R. F. C.	$13,659,877.58	$41,702,465.58
Chase N. B.	2,000,000	7,209,000
Continental	1,250,000*	4,065,000
N. Y. Trust	500,000	1,810,000
Harris	250,000	895,000
Miss. Valley	125,000**	430,000

* reduced by $242,403.74 of Company in bank.

** reduced by $15,672.92 of Company in bank.

*** $7,575,000 debtor's own obligations; and the remainder, its subsidiaries' obligations. $1,400,000 of the collateral given the R. F. C. was not bonds.

The petition asked the court to determine whether it should enjoin the holders of the collateral notes, in the event of default in payment of interest on October 1 to the R. F. C., from selling said collateral. A pertinent portion of Petition No. 15 is set forth below.*

Notice of the filing of the petition and a copy thereof were sent by registered mail to each of the appellants and the protective committees. An answer was again filed by a protective committee (of the 4% General Mortgage) protesting against payment of interest to the R. F. C. and pointing out that the six months' grace period would terminate January 1, when the principal of the bond issue might be declared due. The chairman of another protective committee filed an affidavit in answer to Petition No. 15 requesting the court to enjoin secured creditors from selling the collateral.

The District Court entered Order No. 15 on September 26, directing payment of interest to R. F. C. and stating that:

> "* * the Reconstruction Finance Corporation and the various Banks by their respective counsel having agreed in open Court that, pending the determination of

* (5) "The value of the collateral securing each of the said collateral-loans referred to above is substantially in excess of the amount of the respective loans; and if the holders of the said notes should convert or sell the same, it would cause a substantial and irreparable loss to the trust estate; and in case of a forced sale of the said collateral at the present time, it *might* result in a substantial deficiency judgment *against* the Debtor herein, and would dilute the respective interests in the trust estate of the holders of the First and Refunding Bonds, the St. Paul and Kansas City Short Line 4½% First Mortgage Gold Bonds and the Rock Island, Arkansas and Louisiana 4½ First Mortgage Gold Bonds, and of all the other creditors of the trust estate, in proportion to the rank and lien of the obligations by which their claims or interests therein are evidenced, and of this Debtor as the owner of the trust estate."

> the matters and things submitted in said petition, they would not undertake to convert, sell or dispose of the collateral pledged under their various notes, respectively, except upon five (5) days' notice to the Debtor corporation, if the interest due September 30, 1933, on the said Reconstruction Finance Corporation loan should be paid * * *"

Thereafter, on November 22, the District Court entered Order No. 15 A, from which this appeal was taken. Material portions thereof are set forth in the margin.* The order recited service of the petition upon the appellants and of their special appearance. It stated that the collateral consisting of obligations of the debtor and its subsidiaries to the extent of $54,000,000 is pledged to secure the loans from the R. F. C. and the banks, which loans amounted to $17,784,877.58.

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* "And it further appearing that each of the said collateral notes contains provisions that if the Railway Company shall become insolvent, however such insolvency may be evidenced, or if a receiver shall be appointed of any of the property or assets, or any part thereof, of the Railway Company, or if interest thereon be not paid when due, the holders thereof may sell and dispose of the collateral securing the same; and that there is danger that the holders of said notes will claim that one or more of the events entitling them to sell said collateral have occurred;

"And it further appearing to the Court that a sale of the said collateral, or any part thereof, by the Reconstruction Finance Corporation, or by the said banks, would be inconsistent with the purposes of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, and would hinder, impede, obstruct, delay, and in effect prevent the orderly preparation and consummation of a plan of reorganization of the trust estate under said Section 77, which is the sole purpose of said Section 77, under which these proceedings are now pending;

"And it further appearing that, under the provisions of Paragraph (a) of said Section 77, this Court, having approved the Debtor's petition, has during the pendency of these proceedings exclusive jurisdiction of the Debtor and its property, wherever located; and that under paragraph 15 of Section 2 of the Acts of Congress relating to bankruptcy, this Court has power to make such orders, issue such process, and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of the said Acts of Congress relating to bankruptcy;

"And it further appearing that it is necessary for the enforcement of the provisions of Section 77 that the said holders of said collateral be enjoined and restrained from selling or disposing of the same, or any part thereof, pending the preparation and consummation of said reorganization plan;

"Now, Therefore, it is

"Ordered, that Reconstruction Finance Corporation, The Chase National Bank of the City of New York, New York Trust Company, Mississippi Valley Trust Company of St. Louis, Continental Illinois National Bank and Trust Company of Chicago, and Harris Trust and Savings Bank of Chicago, be and they each hereby are restrained and enjoined from converting, selling, or otherwise disposing of the collateral held by them as security for promissory notes of the Debtor, or any part thereof, until further order of this Court."

A petition for appointment of trustees to operate the railroad was filed by five protective committees on September 26. The debtor filed an answer objecting to appointment of trustees, stating it would only be added expense and that the present directors and officers were competent and experienced. It set forth its corporate structure to support its contention that the stockholders (many of whom had become such in a former reorganization in 1917) had still a property interest of value in the railroad:

Stock 7% preferred	$29,422,189	
6% preferred	25,127,300	
common	74,359,722.50	
	$128,909,211.50	
Funded debt as of June 7, 1933.		
funded debt in hands of public		$281,995,000
" " of subsidiaries		30,370,720
loans and bills payable		17,843,700
		$330,209,420

Valuation of property by Interstate Commerce Commission in 1929—$514,103,604.06.

On November 22, the District Court appointed three trustees to operate the roads of the debtor and of the subsidiaries which had joined in the petition.

Statutes: Pertinent sections of the Bankruptcy Act are set forth below.*

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*11 U. S. C. A. Sec. 11. "The courts of bankruptcy * * are hereby invested, within their respective territorial limits * * with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings * * (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title;"

11 U. S. C. A. Sec. 205 (Section 77) (March, 1933, amendment). "(a) * * If the petition is so approved, the court in which such order approving the petition is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located. * *

"(c) Upon approving the petition as properly filed the judge * * (3) may * * authorize the trustee or trustees to issue certificates for cash, property, or other consideration approved by the judge, for such lawful purposes and upon such terms and conditions and with such security and such priority in payments over existing obligations, secured or unsecured, as might in an equity receivership be lawful; * * For all purposes of this section claims against a railroad corporation which would have been entitled to priority over existing mortgages if a receiver in equity of the properties of the debtor had been appointed by a Federal court at the date of the filing of the petition hereunder shall be entitled to such priority, and holders of such claims shall be treated as a separate class of creditors. * *

Jurisdiction. All appellants assail the order because it is an unauthorized exercise of authority by the court and because it is an unwise exercise of discretion, if authorized. Several appellants who appeared specially, in addition to the above ground, challenge the validity of the order because they reside beyond the territorial jurisdiction of the court, were not parties to the suit, were not before the court (save as they appeared specially), and the court was therefore as to them (*Cherry* v. *Insull Utility Investments, Inc.*, 61 F. (2d) 329) without power to make a valid restraining order. This last assigned ground of attack is unavailable to several of the appellants who reside within the territorial jurisdiction of the District Court, and their bonds which were the subject of the order were also within the Northern District of Illinois, Eastern Division.

In support of the first assault upon the order appellants argue consecutively for the following propositions: (a) Under the Bankruptcy Act as it existed prior to the amendment, a court of bankruptcy could not without actual or constructive possession of the property make an order in a summary proceeding over the objection of a secured creditor, which affected the validity of said secured creditor's lien on, or claim to, said property. (b) Where securities of the bank-

"(g) * * the judge shall confirm the plan if satisfied that * * (6) the plan provides with respect to any class of creditors the acceptance of which is requisite to the confirmation of the plan, and who would not become bound by the plan under the provisions of subdivision (h) of this section, adequate protection for the realization by them of the value of their securities, liens, and claims, either (a) by the sale of such property subject to their liens, if any, or (b) by the sale free of such liens at not less than a fair upset price, and the transfer of such liens to the proceeds of such sale, or (c) by appraisal and payment in cash of either the value of such liens and claims or, at the objecting creditors' election, the value of the securities allotted to such liens and claims under the plan. Section 93, clause (h), of this title shall be applicable to the appraisal of securities under this section, and the value of the unpaid balance shall be appraised as an unsecured claim; * *."

"(h) Upon such confirmation the provisions of the plan shall be binding upon * * (7) all secured creditors of each class of which two-thirds in amount shall have accepted the plan * *

"(l) In addition to the provisions of section 29 of this title for the staying of pending suits against the debtor, such suits shall be further stayed until after final decree the judge may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree. * *

"(n) In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and his property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."

rupt have been transferred to a creditor as collateral more than four months prior to the commencement of the bankruptcy proceedings under circumstances which did not come within the purview of Section 60 (b), Section 67 (e), or Section 70 (e), of the Bankruptcy Act, the claim of such secured creditor to the possession of such pledged security and its right to deal therewith in accordance with the terms of the pledge constitute a substantial adverse claim which may only be validly attacked in a plenary suit. (c) A court of bankruptcy is not authorized to restrain, through an order entered in a summary proceeding, the sale of collateral which was in the possession of the secured creditor prior to the commencement of the bankruptcy proceedings. (d) Where the pledged collateral consists of obligations of a corporation other than the insolvent debtor, the sale of the collateral may not be enjoined in a summary proceeding and can not be enjoined in a plenary suit if the pledge were not a voidable preference. (e) The amendment, Section 77 of the Bankruptcy Act, did not extend the power of the court to issue injunctions to restrain sale of collateral held by a creditor. (f) Section 74, enacted as a part of the same act which contained Section 77, has been construed by a district court as not authorizing courts of bankruptcy to enjoin a sale of pledged collateral of the debtor. (g) The same construction should be given to Section 77, and both Section 77 and Section 74 should be construed so as to grant to courts of bankruptcy no more authority than the statute expressly conveys. So construed, courts of bankruptcy, under the amendment, have no greater authority to grant injunctions restraining the sale of collateral than they had before.

It may be and is assumed for the purpose of this argument (*Bardes* v. *Hawarden Bank*, 178 U. S. 524, 527; *Taubel-Scott-Kitzmiller Co., Inc.* v. *Fox*, 264 U. S. 426, 432) that the order here under review, having been entered in a summary proceeding, could not be sustained as against all appellants save as the amendment known as Section 77 of the Bankruptcy Act supplies the authority therefor. We can therefore address ourselves promptly and directly to the terms, the effect, and the validity of said Section 77.

That the order may have been sustained under the Bankruptcy Act, before amendment under certain circumstances and as against creditors who occupy positions similar to some of the appellants is earnestly asserted. We are, however, for brevity's sake, avoiding a discussion of such questions

because unnecessary. We desire to direct our attention to the statute as amended—to the condition that confronts us, not to a theoretical or suppositious question.

For a consideration of the general powers of Congress to deal with bankruptcy matters, to define and confer powers and jurisdiction upon District Courts, reference is made to the decision in *In re Parmenter*, 70 F. (2d) 929.

Upon the authority expressly granted by the Constitution to Congress (Art. 1. Sec. 8.), that body is authorized to enact such bankruptcy legislation as it may deem wise and appropriate. The constitutional grant of authority is not conditional nor limited, save that its laws be uniform throughout the United States. If the Congress divides debtors into classes such as farmers, corporations, individuals, railroads, etc., it is acting within its powers. It is not for the courts to brush aside such classifications on the ground that there is not sufficient justification in fact therefor. Congress may determine the amount of claims and the number of creditors necessary to file an involuntary petition. It may authorize the filing of voluntary petitions and may limit that right in so far as involuntary petitions are concerned. Title 11 U. S. C. A. Sec. 22. Even solvent persons may go through bankruptcy via the voluntary route. *Hanover National Bank* v. *Moyses*, 186 U. S. 181. And this was so before the 1933 amendments.

Congress, having the express authority to enact legislation on the subject matter of bankruptcy, was the sole judge of the means and their appropriateness to the purpose of the legislation so long as said means did no violence to the provisions of the Constitution.

It required no investigation by Congress to show that the railroad companies occupied a distinct and unique position and were the legitimate subject of special provisions of the Bankruptcy Act. The necessity of continuing the operation of the railroad, the impracticability of liquidating its assets through the usual methods adopted in courts of bankruptcy, the futility of selling divisions or subdivisions of railroads or of rolling stock, etc.,—all unite to furnish a basis in fact for a classification of debtors which singled out railroad corporations and provided specially and specifically for their administration by the Court.

In the amendment of 1933 there appeared in the new Section 77 several provisions which are significant when considering the various objections to the court's jurisdiction.

Section 205 (a), Title 11, reads:

"• • If the petition is so approved, the court in which such order approving the petition is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located."

Section 205 (c) (3) provides that the judge

"• • may for cause shown, and with the approval of the commission, • • • authorize the trustee or trustees to issue certificates for cash • • • and with such security and such priority in payments over existing obligations, secured or unsecured, as might in an equity receivership be lawful."

Section 201 provides:

"In addition to the jurisdiction exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, courts of bankruptcy shall exercise original jurisdiction in proceedings for the relief of debtors, as provided in sections 202, 203, and 205 of this chapter."

The provision which expressly extends jurisdiction of the court of bankruptcy is significant and distinguishes decisions under the Bankruptcy Act as it existed prior to the amendment.

There were no legal obstacles to Congress' making the jurisdiction of the court of bankruptcy co-extensive with the territorial boundaries of the United States. In fact, under existing provisions of the Constitution, Congress might validly extend the jurisdiction of any District Court to the entire United States. *U. S.* v. *Union Pacific*, 98 U. S. 569, 604. There were strong reasons for extending the jurisdiction of the court of bankruptcy in railroad cases.

No sufficient reason has been advanced for refusing to give to the language of this section ("have exclusive jurisdiction of the debtor and its property wherever located") the effect and construction which it clearly demands. It extended the court's jurisdiction over the debtor's property so as to include the entire United States. It was intended to and did wisely exclude ancillary receivership proceedings in bankruptcy cases wherein railroad corporations were the bankrupts.

The question, Was the collateral with which the debtor secured its loans from the appellants, property as that word

is used in Section 77? we answer in the affirmative. It is true a debt is not an asset. It is a liability. But here the bonds which the debtor gave the creditor as security (largely debtor's bonds) were not transferred absolutely to the creditor. An equity therein existed and belonged to the debtor. The debtor could sell this equity. It could assign it. The bonds were secured by a mortgage on debtor's property, and each bond carried its pro rata share of the mortgaged security. The same may be said of the bonds of the debtor's subsidiaries.

This construction of the act overcomes the objection of those appellants who by special appearance attacked the order on the ground that the property of the bankrupt corporation was not within the territorial limits of the district wherein the court who entered the order was residing. We hold this was not necessary, for the arm of the court extended to the property of bankrupt "wherever located"—that is, anywhere in the United States. In short, the jurisdiction of the court, so far as the property was concerned, included the territory wherein all of appellees' bonds were located.

May the restraining order be issued in a summary proceeding? Again we look to the 1933 amendment to find the authority for the court to so proceed.

Title 11, Section 205, subdivision (c), conveyed to the court of bankruptcy many powers in addition to those conveyed by the Bankruptcy Act as originally enacted. Some of them were like those exercised by a court of equity in receivership matters. For instance, subdivision (3) of this section makes direct reference to the powers of a court of equity. It provides that a judge may for cause shown authorize the issuance of certificates as "might in an equity receivership be lawful."

Surely, we are justified in giving to the amendment a liberal construction, one that is consonant with the purposes of this remedial legislation. That which distinguishes this section from the old act—the gist of the change evidenced by this amendment, that which makes it effective—is the provision which calls for a plan of reorganization. It calls not for a sale of assets and a discharge of the debtor, but for a plan of reorganization wherein the indebtedness and capital structure are changed (usually reduced) so that the debtor may live and the creditors will receive more than is obtainable upon a liquidation sale. The consummation of a fair and equitable plan of reorganization is the goal of the legislation. How could a plan of reorganization be perfected unless the

courts restrained creditors and lienholders from proceeding in a manner which would defeat the consummation of said plan?

In the instant case some fifty-four millions of dollars of the debtor's and its subsidiaries' bonds were hypothecated with creditors whose claims were scarcely one-third that amount. To successfully reorganize, it is necessary to take care of the funded indebtedness amounting to approximately two hundred and eighty millions of dollars. If, in addition thereto, fifty-four million dollars of bonds were beyond the control of the court, it would be quite impossible to proceed with any reorganization.

Nor can we say the appellants, the claimants, occupied such an adversary status that a trial in a plenary suit was necessary. The trustees named by the court in the bankruptcy proceedings were not claiming adversely to appellants. The creditors were not claiming liens or title to property adverse to the trustees. The trustees admit the legality of the security held by the creditors, as well as the validity and amount of the creditors' claims.

The controversy was restricted to a restraining of the immediate pursuit of a remedy by the creditors in order that a plan might be presented which would take care of appellants' claims in full but without special and irreparable injury to other creditors, general and preferred, who were less fortunate in the amount and character of their security.

Our conclusion is that the restraining order is an exercise of authority on the part of the court which was necessary to the effective use of the powers expressly conferred by Congress through this amendment. In short, it was the exercise of a power which was incident to those expressly conveyed by Congress to the court. The proceeding involved no adversary contest but merely the pursuit of a remedy. The court violated no right of the appellants of which they could complain when it temporarily stayed the enforcement of their remedy arising out of the pledge of the collateral. *Home Building & Loan Ass'n.* v. *Blaisdell,* 290 U. S. 398.

Upon the record before us we cannot say that the sale of the collateral by the pledgees will not defeat the purposes of Section 77. On the other hand, we agree with Judge Wilkerson that the facts called for an exercise of discretion on the part of the court in favor of the moving parties.

The first impression might well be to the effect that the statement of appellants that they did not contemplate the

sale of the securities obviated the necessity of an injunction. Such assurance by the creditors, however, was limited to a very short period—five days. The consummation of a reorganization plan of a railroad of the magnitude of the debtor, during which time the claims of the conflicting parties and interests must be considered, necessitates not five days but a much longer period, the exact duration of which can not be prognosticated. Without some control over the disposition of $54,000,000 of bonds which have been hypothecated to secure nearly $18,000,000 of indebtedness, the presentation of a satisfactory plan of reorganization might as well be abandoned.

Appellants, it seems to us, overstress the dangers of the pendency of such injunctional order. It is not irrevocable. It may be vacated. It may at any time be changed upon a convincing showing by the creditors. The court will protect appellants against possible injury traceable to frozen asset anxieties as promptly as it will endeavor to effectuate a plan which will result in the full payment of appellants' claims and the maximum safety and security for the holders of other bonds and obligations of the debtor. If plans are not forthcoming with reasonable promptness, relief will be granted appellants. This bankruptcy proceeding contemplates a plan of reorganization. *This must be undertaken expeditiously and proceeded with diligently. Such proceedings must never be viewed as nursing receiverships.* The two sections, 74 and 77, are not to be used to delay, but to facilitate reorganizations of properties that are over-capitalized or whose capital structure is unfortunate. There is no basis for appellants to assume the court will not insist on the consummation of these ends.

Appellants have received and will probably continue to receive the prompt payment of interest upon their claims secured by the debtor's and its subsidiaries' bonds. Balancing equities, we find the court wisely sought to protect the great mass of debtor's creditors without injuring the position of appellants and at the same time keeping strictly within its power. It retains the power to correct or modify any restraining order if and when a creditor presents a meritorious cause for modification.

Appellants' attack on the merits is somewhat unique. They do not object to the terms of the order for they do not contemplate the sale of the pledged collateral. They object to being ordered. If the court may make such an order, and

we hold it can, little attention need be given to an objection which if sustained would be destructive of that cooperative action which is so essential in the readjustment of the debtor's debts and its capital structure or in the reorganization contemplated by Section 77.

As to the constitutionality of Section 77 of the Bankruptcy Act, little need be said in addition to what has already been stated, to show this objection is untenable. If the order assailed deals merely with the remedy, as we hold it does, then the amendments violate no provision of the Constitution. That such restraining orders affect the remedy only, see *Allebach* v. *Thomas*, 16 F. (2d) 853. Likewise, legislation which deals with the subject of bankruptcy, that is, legislation for the benefit and relief of creditors and debtors—is not subject to the same constitutional limitations as legislation which deals with other subjects and which affects contractual rights and obligations of debtors and creditors. The grant of power "to establish • • uniform laws on the subject of bankruptcy" was necessarily a grant of power the exercise of which would impair the obligation of contracts. For legislation on the subject of bankruptcy contemplated a discharge of the debtor's debts—which is an impairment of contractual obligations. *Hanover National Bank* v. *Moyses*, 186 U. S. 181.

The decree is affirmed.

Endorsed: Filed July 23, 1934. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the twenty-third day of July 1934, the following further proceedings were had and entered of record, to-wit:

Monday, July 23, 1934.

Court met pursuant to adjournment and was opened by proclamation.

Before:

Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.

In the Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY,

5115 *vs.*

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor, FRANK O. LOWDEN, JAMES E. GORMAN, and JOSEPH B. FLEMING, Trustees of all the property of the Debtor, to LEON O. FISHER, ROBERT DECHERT, STACY B. LLOYD, JAMES LEE LOOMIS and ROBERT H. STENHOUSE, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to DWIGHT S. BEEBE, MERREL P. CALLAWAY, HARRY G. HAGERTY, DeWITT MILLHAUSER, JOHN W. STEDMAN, HAROLD STONE and FREDERICK W. WALKER, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to RALPH WOLF, PIERPONT V. DAVIS, A. F. LAFRENTZ, GEORGE N. LINDSAY and STEELE MITCHELL, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to ALFRED H. MEYERS, MILO W. WILDER, JR., STERLING PIERSON, FRED P. HAYWARD, HOWARD GREENE, WM. J. LUM and EDWIN S. HUNT, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to JAMES G. BLAINE, FRANK M. GORDON, WILLIAM V. GRIFFIN, R. G. PAGE and JAMES G. TROWBRIDGE, constituting a Protective Committee for the ST. PAUL & KANSAS CITY SHORT LINE RAILROAD COMPANY FIRST MORTGAGE 4½% Bonds and ROCK ISLAND, ARKANSAS & LOUISIANA FIRST MORTGAGE 4½% Bonds.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

In the Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,

5116 vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor, FRANK O. LOWDEN, JAMES E. GORMAN, and JOSEPH B. FLEMING, Trustees of all the property of the Debtor, to LEON O. FISHER, ROBERT DECHERT, STACY B. LLOYD, JAMES LEE LOOMIS and ROBERT H. STENHOUSE, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to DWIGHT S. BEEBE, MERREL P. CALLAWAY, HARRY G. HAGERTY, DeWITT MILLHAUSER, JOHN W. STEDMAN, HAROLD STONE and FREDERICK W. WALKER, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to RALPH WOLF, PIERPONT V. DAVIS, A. F. LAFRENTZ, GEORGE N. LINDSAY and STEELE MITCHELL, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to ALFRED H. MEYERS, MILO W. WILDER, JR., STERLING PIERSON, FRED P. HAYWARD, HOWARD GREENE, WM. J. LUM and EDWIN S. HUNT, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to JAMES G. BLAINE, FRANK M. GORDON, WILLIAM V. GRIFFIN, R. G. PAGE and JAMES G. TROWBRIDGE, constituting a Protective Committee for the ST. PAUL & KANSAS CITY SHORT LINE RAILROAD COMPANY FIRST MORTGAGE 4½% Bonds and ROCK ISLAND, ARKANSAS & LOUISIANA FIRST MORTGAGE 4½% Bonds.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

In the Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

MISSISSIPPI VALLEY TRUST COMPANY,

5117 *vs.*

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor, FRANK O. LOWDEN, JAMES E. GORMAN, and JOSEPH B. FLEMING, Trustees of all the property of the Debtor, to LEON O. FISHER, ROBERT DECHERT, STACY B. LLOYD, JAMES LEE LOOMIS and ROBERT H. STENHOUSE, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to DWIGHT S. BEEBE, MERREL P. CALLAWAY, HARRY G. HAGERTY, DeWITT MILLHAUSER, JOHN W. STEDMAN, HAROLD STONE and FREDERICK W. WALKER, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to RALPH WOLF, PIERPONT V. DAVIS, A. F. LAFRENTZ, GEORGE N. LINDSAY and STEELE MITCHELL, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to ALFRED H. MEYERS, MILO W. WILDER, JR., STERLING PIERSON, FRED P. HAYWARD, HOWARD GREENE, WM. J. LUM and EDWIN S. HUNT, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to JAMES G. BLAINE, FRANK M. GORDON, WILLIAM V. GRIFFIN, R. G. PAGE and JAMES G. TROWBRIDGE, constituting a Protective Committee for the ST. PAUL & KANSAS CITY SHORT LINE RAILROAD COMPANY FIRST MORTGAGE 4½% Bonds and ROCK ISLAND, ARKANSAS & LOUISIANA FIRST MORTGAGE 4½% Bonds.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

In the Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

HARRIS TRUST AND SAVINGS BANK,

5118 vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor, FRANK O. LOWDEN, JAMES E. GORMAN, and JOSEPH B. FLEMING, Trustees of all the property of the Debtor, to LEON O. FISHER, ROBERT DECHERT, STACY B. LLOYD, JAMES LEE LOOMIS and ROBERT H. STENHOUSE, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to DWIGHT S. BEEBE, MERREL P. CALLAWAY, HARRY G. HAGERTY, DeWITT MILLHAUSER, JOHN W. STEDMAN, HAROLD STONE and FREDERICK W. WALKER, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to RALPH WOLF, PIERPONT V. DAVIS, A. F. LAFRENTZ, GEORGE N. LINDSAY and STEELE MITCHELL, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to ALFRED H. MEYERS, MILO W. WILDER, JR., STERLING PIERSON, FRED P. HAYWARD, HOWARD GREENE, WM. J. LUM and EDWIN S. HUNT, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to JAMES G. BLAINE, FRANK M. GORDON, WILLIAM V. GRIFFIN, R. G. PAGE and JAMES G. TROWBRIDGE, constituting a Protective Committee for the ST. PAUL & KANSAS CITY SHORT LINE RAILROAD COMPANY FIRST MORTGAGE 4½% Bonds and ROCK ISLAND, ARKANSAS & LOUISIANA FIRST MORTGAGE 4½% Bonds.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

In the Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

THE NEW YORK TRUST COMPANY,

5119 *vs.*

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor, FRANK O. LOWDEN, JAMES E. GORMAN, and JOSEPH B. FLEMING, Trustees of all the property of the Debtor, to LEON O. FISHER, ROBERT DECHERT, STACY B. LLOYD, JAMES LEE LOOMIS and ROBERT H. STENHOUSE, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to DWIGHT S. BEEBE, MERREL P. CALLAWAY, HARRY G. HAGERTY, DeWITT MILLHAUSER, JOHN W. STEDMAN, HAROLD STONE and FREDERICK W. WALKER, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to RALPH WOLF, PIERPONT V. DAVIS, A. F. LAFRENTZ, GEORGE N. LINDSAY and STEELE MITCHELL, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to ALFRED H. MEYERS, MILO W. WILDER, JR., STERLING PIERSON, FRED P. HAYWARD, HOWARD GREENE, WM. J. LUM and EDWIN S. HUNT, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to JAMES G. BLAINE, FRANK M. GORDON, WILLIAM V. GRIFFIN, R. G. PAGE and JAMES G. TROWBRIDGE, constituting a Protective Committee for the ST. PAUL & KANSAS CITY SHORT LINE RAILROAD COMPANY FIRST MORTGAGE 4½% Bonds and ROCK ISLAND, ARKANSAS & LOUISIANA FIRST MORTGAGE 4½% Bonds.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

In the Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

RECONSTRUCTION FINANCE CORPORATION,
5120 vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor, FRANK O. LOWDEN, JAMES E. GORMAN, and JOSEPH B. FLEMING, Trustees of all the property of the Debtor, to LEON O. FISHER, ROBERT DECHERT, STACY B. LLOYD, JAMES LEE LOOMIS and ROBERT H. STENHOUSE, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to DWIGHT S. BEEBE, MERREL P. CALLAWAY, HARRY G. HAGERTY, DeWITT MILLHAUSER, JOHN W. STEDMAN, HAROLD STONE and FREDERICK W. WALKER, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to RALPH WOLF, PIERPONT V. DAVIS, A. F. LAFRENTZ, GEORGE N. LINDSAY and STEELE MITCHELL, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to ALFRED H. MEYERS, MILO W. WILDER, JR., STERLING PIERSON, FRED P. HAYWARD, HOWARD GREENE, WM. J. LUM and EDWIN S. HUNT, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to JAMES G. BLAINE, FRANK M. GORDON, WILLIAM V. GRIFFIN, R. G. PAGE and JAMES G. TROWBRIDGE, constituting a Protective Committee for the ST. PAUL & KANSAS CITY SHORT LINE RAILROAD COMPANY FIRST MORTGAGE 4½% Bonds and ROCK ISLAND, ARKANSAS & LOUISIANA FIRST MORTGAGE 4½% Bonds.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

In the Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY,

5159 *vs.*

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor, FRANK O. LOWDEN, JAMES E. GORMAN, and JOSEPH B. FLEMING, Trustees of all the property of the Debtor, to LEON O. FISHER, ROBERT DECHERT, STACY B. LLOYD, JAMES LEE LOOMIS and ROBERT H. STENHOUSE, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to DWIGHT S. BEEBE, MERREL P. CALLAWAY, HARRY G. HAGERTY, DeWITT MILLHAUSER, JOHN W. STEDMAN, HAROLD STONE and FREDERICK W. WALKER, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to RALPH WOLF, PIERPONT V. DAVIS, A. F. LAFRENTZ, GEORGE N. LINDSAY and STEELE MITCHELL, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to ALFRED H. MEYERS, MILO W. WILDER, JR., STERLING PIERSON, FRED P. HAYWARD, HOWARD GREENE, WM. J. LUM and EDWIN S. HUNT, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to JAMES G. BLAINE, FRANK M. GORDON, WILLIAM V. GRIFFIN, R. G. PAGE and JAMES G. TROWBRIDGE, constituting a Protective Committee for the ST. PAUL & KANSAS CITY SHORT LINE RAILROAD COMPANY FIRST MORTGAGE 4½% Bonds and ROCK ISLAND, ARKANSAS & LOUISIANA FIRST MORTGAGE 4½% Bonds.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

In the Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,

5160 *vs.*

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor, FRANK O. LOWDEN, JAMES E. GORMAN, and JOSEPH B. FLEMING, Trustees of all the property of the Debtor, to LEON O. FISHER, ROBERT DECHERT, STACY B. LLOYD, JAMES LEE LOOMIS and ROBERT H. STENHOUSE, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to DWIGHT S. BEEBE, MERREL P. CALLAWAY, HARRY G. HAGERTY, DeWITT MILLHAUSER, JOHN W. STEDMAN, HAROLD STONE and FREDERICK W. WALKER, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to RALPH WOLF, PIERPONT V. DAVIS, A. F. LAFRENTZ, GEORGE N. LINDSAY and STEELE MITCHELL, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to ALFRED H. MEYERS, MILO W. WILDER, JR., STERLING PIERSON, FRED P. HAYWARD, HOWARD GREENE, WM. J. LUM and EDWIN S. HUNT, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to JAMES G. BLAINE, FRANK M. GORDON, WILLIAM V. GRIFFIN, R. G. PAGE and JAMES G. TROWBRIDGE, constituting a Protective Committee for the ST. PAUL & KANSAS CITY SHORT LINE RAILROAD COMPANY FIRST MORTGAGE 4½% Bonds and ROCK ISLAND, ARKANSAS & LOUISIANA FIRST MORTGAGE 4½% Bonds.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

In the Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

MISSISSIPPI VALLEY TRUST COMPANY,
5161 *vs.*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor, FRANK O. LOWDEN, JAMES E. GORMAN, and JOSEPH B. FLEMING, Trustees of all the property of the Debtor, to LEON O. FISHER, ROBERT DECHERT, STACY B. LLOYD, JAMES LEE LOOMIS and ROBERT H. STENHOUSE, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to DWIGHT S. BEEBE, MERREL P. CALLAWAY, HARRY G. HAGERTY, DeWITT MILLHAUSER, JOHN W. STEDMAN, HAROLD STONE and FREDERICK W. WALKER, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to RALPH [illegible], PIERPONT V. DAVIS, A. F. LAFRENTZ, GEORGE N. LINDSAY and STEELE MITCHELL, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to ALFRED H. MEYERS, MILO W. WILDER, JR., STERLING PIERSON, FRED P. HAYWARD, HOWARD GREENE, WM. J. LUM and EDWIN S. HUNT, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to JAMES G. BLAINE, FRANK M. GORDON, WILLIAM V. GRIFFIN, R. G. PAGE and JAMES G. TROWBRIDGE, constituting a Protective Committee for the ST. PAUL & KANSAS CITY SHORT LINE RAILROAD COMPANY FIRST MORTGAGE 4½% Bonds and ROCK ISLAND, ARKANSAS & LOUISIANA FIRST MORTGAGE 4½% Bonds.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

In the Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

HARRIS TRUST AND SAVINGS BANK,

5162 vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor, FRANK O. LOWDEN, JAMES E. GORMAN, and JOSEPH B. FLEMING, Trustees of all the property of the Debtor, to LEON O. FISHER, ROBERT DECHERT, STACY B. LLOYD, JAMES LEE LOOMIS and ROBERT H. STENHOUSE, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to DWIGHT S. BEEBE, MERREL P. CALLAWAY, HARRY G. HAGERTY, DeWITT MILLHAUSER, JOHN W. STEDMAN, HAROLD STONE and FREDERICK W. WALKER, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to RALPH WOLF, PIERPONT V. DAVIS, A. F. LAFRENTZ, GEORGE N. LINDSAY and STEELE MITCHELL, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to ALFRED H. MEYERS, MILO W. WILDER, JR., STERLING PIERSON, FRED P. HAYWARD, HOWARD GREENE, WM. J. LUM and EDWIN S. HUNT, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to JAMES G. BLAINE, FRANK M. GORDON, WILLIAM V. GRIFFIN, R. G. PAGE and JAMES G. TROWBRIDGE, constituting a Protective Committee for the ST. PAUL & KANSAS CITY SHORT LINE RAILROAD COMPANY FIRST MORTGAGE 4½% Bonds and ROCK ISLAND, ARKANSAS & LOUISIANA FIRST MORTGAGE 4½% Bonds.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

In the Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

THE NEW YORK TRUST COMPANY,

5163 *vs.*

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor, FRANK O. LOWDEN, JAMES E. GORMAN, and JOSEPH B. FLEMING, Trustees of all the property of the Debtor, to LEON O. FISHER, ROBERT DECHERT, STACY B. LLOYD, JAMES LEE LOOMIS and ROBERT H. STENHOUSE, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to DWIGHT S. BEEBE, MERREL P. CALLAWAY, HARRY G. HAGERTY, DeWITT MILLHAUSER, JOHN W. STEDMAN, HAROLD STONE and FREDERICK W. WALKER, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to RALPH WOLF, PIERPONT V. DAVIS, A. F. LAFRENTZ, GEORGE N. LINDSAY and STEELE MITCHELL, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to ALFRED H. MEYERS, MILO W. WILDER, JR., STERLING PIERSON, FRED P. HAYWARD, HOWARD GREENE, WM. J. LUM and EDWIN S. HUNT, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to JAMES G. BLAINE, FRANK M. GORDON, WILLIAM V. GRIFFIN, R. G. PAGE and JAMES G. TROWBRIDGE, constituting a Protective Committee for the ST. PAUL & KANSAS CITY SHORT LINE RAILROAD COMPANY FIRST MORTGAGE 4½% Bonds and ROCK ISLAND, ARKANSAS & LOUISIANA FIRST MORTGAGE 4½% Bonds.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

In the Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

RECONSTRUCTION FINANCE CORPORATION,

5164 v.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor, FRANK O. LOWDEN, JAMES E. GORMAN, and JOSEPH B. FLEMING, Trustees of all the property of the Debtor, to LEON O. FISHER, ROBERT DECHERT, STACY B. LLOYD, JAMES LEE LOOMIS and ROBERT H. STENHOUSE, constituting a Protective Committee for the Debtor's General Mortgage 4% Gold Bonds; to DWIGHT S. BEEBE, MERREL P. CALLAWAY, HARRY G. HAGERTY, DeWITT MILLHAUSER, JOHN W. STEDMAN, HAROLD STONE and FREDERICK W. WALKER, constituting a Protective Committee for the Debtor's First and Refunding Mortgage 4% Gold Bonds and its Secured 4½% Gold Bonds; to RALPH WOLF, PIERPONT V. DAVIS, A. F. LAFRENTZ, GEORGE N. LINDSAY and STEELE MITCHELL, constituting a Protective Committee for the Debtor's Thirty-Year 4½% Convertible Gold Bonds; to ALFRED H. MEYERS, MILO W. WILDER, JR., STERLING PIERSON, FRED P. HAYWARD, HUNT, constituting a Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company Consolidated First Mortgage 5% Bonds; and to JAMES G. BLAINE, FRANK M. GORDON, WILLIAM V. GRIFFIN, R. G. PAGE and JAMES G. TROWBRIDGE, constituting a Protective Committee for the ST. PAUL & KANSAS CITY SHORT LINE RAILROAD COMPANY FIRST MORTGAGE 4½% Bonds and ROCK ISLAND, ARKANSAS & LOUISIANA FIRST MORTGAGE 4½% Bonds.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the City of Chicago in said Seventh Circuit on the second day of October, 1934, of the October Term in the year of our Lord one thousand nine hundred and thirty-four, and of our Independence the one hundred and fifty-ninth.

And afterwards, to wit: On the fifth day of October, 1934, there was filed in the office of the Clerk of this Court, a Praecipe for Supreme Court Record, which said Praecipe is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

In the Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
Debtor.

CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY,
Nos. 5115 and 5159 *vs.* *Appellant,*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.,*
Appellees.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
Nos. 5116 and 5160 *vs.* *Appellant,*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.,*
Appellees.

MISSISSIPPI VALLEY TRUST COMPANY,
Nos. 5117 and 5161 *vs.* *Appellant,*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.,*
Appellees.

HARRIS TRUST & SAVINGS BANK,
Nos. 5118 and 5162 *vs.* *Appellant,*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.,*
Appellees.

THE NEW YORK TRUST COMPANY,
Nos. 5119 and 5163 *vs.* *Appellant,*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.,*
Appellees.

RECONSTRUCTION FINANCE CORPORATION,
Nos. 5120 and 5164 *vs.* *Appellant,*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.,*
Appellees.

To the Clerk of the United States Circuit Court of Appeals, for the Seventh Circuit:

You are hereby requested to make a transcript of record and proceedings for use by the appellants in each of the above

entitled causes, in connection with an application (or applications) they propose to make to the Supreme Court of the United States for a review of said causes by certiorari, and to include in said transcript the following, in addition to the printed transcript of record upon which said causes were heard in the Circuit Court of Appeals:

1. Petition of Lowden, et al., as Trustees for the Debtor, to be made parties to said appeals, filed in your Court on April 6, 1934.
2. Order making Lowden, et al., as such Trustees, parties to said appeal entered on said petition on April 6, 1934.
3. Entries showing hearing, submission and taking under advisement of each case entered May 28, 1934.
4. Joint opinion covering all of the above appeals filed July 23, 1934.
5. Decrees affirming entered in each of said cases on July 23, 1934.
6. Copy of this praecipe.

HOPKINS, STARR & GODMAN,
On Behalf of Reconstruction Finance Corporation, Appellant,
and
DAVID F. ROSENTHAL,
On Behalf of Continental Illinois National Bank and Trust Company of Chicago, Harris Trust and Savings Bank, The Chase National Bank of the City of New York, Mississippi Valley Trust Company, and New York Trust Company, the Other Appellants.

Endorsed: Filed Oct. 5, 1934. Frederick G. Campbell, Clerk.

And afterwards, to wit: On the twelfth day of October, 1934, there was filed in the office of the Clerk of this Court a Stipulation which said Stipulation is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
vs. *Appellant,*
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor, *et al.*, *Appellees.* } Nos. 5115, 5159.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
vs. *Appellant,*
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor, *et al.*, *Appellees.* } Nos. 5116, 5160.

MISSISSIPPI VALLEY TRUST COMPANY,
vs. *Appellant,*
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor, *et al.*, *Appellees.* } Nos. 5117, 5161.

HARRIS TRUST AND SAVINGS BANK,
vs. *Appellant,*
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor, *et al.*, *Appellees.* } Nos. 5118, 5162.

THE NEW YORK TRUST COMPANY,
vs. *Appellant,*
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor, *et al.*, *Appellees.* } Nos. 5119, 5163.

RECONSTRUCTION FINANACE CORPORATION,
vs. *Appellant,*
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor, *et al.*, *Appellees.* } Nos. 5120, 5164.

STIPULATION.

It Is Hereby Stipulated and Agreed by and between the parties hereto by their respective attorneys that:

1. All semi-annual interest becoming due and payable on the promissory notes of the Debtor held by the appellants on all dates up to and including September 30, 1933, was duly paid to said appellants by the Debtor. The next following

date upon which semi-annual interest was due and payable on any of said notes was December 27, 1933. The semi-annual interest due and payable on said last mentioned date was not paid, and no semi-annual interest due on any subsequent interest payment date on said notes has been paid.

2. On or about February 1, 1934 and August 1, 1934, respectively, the appellants received the aggregate sums of $62,914.50 and $64,132.20, respectively, from the Trustees of the Debtor's First and Refunding Mortgage, said sums constituting the appellants' pro rata share of payments made to all holders of bonds secured by said mortgage and having been paid to said appellants on account of First and Refunding Bonds of the Debtor held by the respective appellants (together with other collateral) as collateral security for the payment of said notes. Between September 26, 1933 and September 30, 1934 the appellant, Reconstruction Finance Corporation, received the aggregate sum of $249,224.10 from Railroad Credit Corporation on account of the assignment by the Debtor to Reconstruction Finance Corporation (as part of the collateral pledged by the Debtor to Reconstruction Finance Corporation as security for the payment of notes of the Debtor held by Reconstruction Finance Corporation) of the Debtor's distributive share in the assets of Railroad Credit Corporation.

It Is Further Stipulated and Agreed that this stipulation and agreement may be filed with the Clerk of this Court, and when so filed, shall be deemed by the parties hereto as part of the record in the above causes, and may be included by the Clerk of said Court in and as part of the record in said causes for the purpose of an application or applications to the Supreme Court of the United States by any one or more of the parties hereto for a writ or writs of certiorari, and for all other or further proceedings herein.

Dated, October 4th, 1934.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
By PAUL D. MILLER,
Its Attorney.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
By ISAAC H. MAYER,
CARL MEYER,
DAVID F. ROSENTHAL, &
HERBERT A. FRIEDLICH,
Its Attorneys.

MISSISSIPPI VALLEY TRUST COMPANY,
By T. M. PIERCE,
MILTON R. STAHL, and
S. WAGNER WALLACE,
Its Attorneys.

HARRIS TRUST AND SAVINGS BANK,
By PERRY M. CHADWICK,
Its Attorney.

THE NEW YORK TRUST COMPANY,
By EDWIN W. SIMS,
JAMES P. CAREY, JR.,
Its Attorneys.

RECONSTRUCTION FINANCE CORPORATION,
By JOHN L. HOPKINS,
C. M. CLAY, &
J. A. SPROWL,
Its Attorneys.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, DEBTOR, and FRANK O. LOWDEN, JAMES E. GORMAN AND JOSEPH B. FLEMING, Trustees of the Estate of the Debtor,
By MARCUS L. BELL,
W. F. DICKINSON,
W. F. PETER,
Their Attorneys.

PROTECTIVE COMMITTEE FOR THE DEBTOR'S FIRST AND REFUNDING 4% GOLD BONDS AND SECURED 4½% GOLD BONDS,
By ELIHU ROOT, JR.,
WILKIE BUSHBY,
Their Attorneys.

PROTECTIVE COMMITTEE FOR THE DEBTOR'S THIRTY-YEAR 4½% CONVERTIBLE BONDS,
By WM. LLOYD KITCHEL,
Their Attorneys.

PROTECTIVE COMMITTEE FOR THE BURLINGTON CEDAR RAPIDS & NORTHERN RAILWAY COMPANY'S CONSOLIDATED FIRST MORTGAGE 5% BONDS,
By EDWARD C. BAILLY,
Their Attorney

PROTECTIVE COMMITTEE FOR THE DEBTOR'S GENERAL MORTGAGE 4% GOLD BONDS,
By EDWARD W. BOMME,
Attorney.
PROTECTIVE COMMITTEE FOR ST. PAUL & KANSAS CITY SHORT LINE 4½% GOLD BONDS AND ROCK ISLAND, ARKANSAS & LOUISIANA 4½% GOLD BONDS,
By ALFRED N. HEUSTON,
Former Attorney of record.
By ANDUNDON & DUNCAN,
Present Attorneys of record.

Endorsed: Filed Oct. 12, 1934. Frederick G. Campbell, Clerk.

And on the same day, to wit: On the twelfth day of October, 1934, there was filed in the office of the Clerk of this Court a Supplemental Praecipe for Record, which said Supplemental Praecipe is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

In the Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
Debtor.

CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY,
Nos. 5115 and 5159 *vs.* *Appellant,*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,
Appellees.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
Nos. 5116 and 5160 *vs.* *Appellant,*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,
Appellees.

MISSISSIPPI VALLEY TRUST COMPANY,
Nos. 5117 and 5161 *vs.* *Appellant,*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,
Appellees.

HARRIS TRUST & SAVINGS BANK,
Nos. 5118 and 5162 *vs.* *Appellant,*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,
Appellees.

THE NEW YORK TRUST COMPANY,
Nos. 5119 and 5163 *vs.* *Appellant,*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,
Appellees.

RECONSTRUCTION FINANCE CORPORATION,
Nos. 5120 and 5164 *vs.* *Appellant,*
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,
Appellees.

SUPPLEMENTAL PRAECIPE FOR RECORD.

To the Clerk of the United States Circuit Court of Appeals, for the Seventh Circuit:

You are hereby requested to include in the transcript of record and proceedings for use by the appellants in each of the above entitled causes, in connection with an application (or applications) they proposed to make to the Supreme

Court of the United States for a review of said causes by certiorari, the following, in addition to the matters requested in the original praecipe filed herein:

1. Stipulation dated October 4, 1934 and filed herein October 12, 1934.
2. Copy of this supplemental praecipe.

JOHN L. HOKPINS,
C. M. CLAY,
JAMES A. SPROWL,
On Behalf of Reconstruction Finance Corporation, Appellant,
and
DAVID F. ROSENTHAL, &
HERBERT A. FRIEDLICH,
On Behalf of Continental Illinois National Bank and Trust Company of Chicago, Harris Trust and Savings Bank, the Chase National Bank of the City of New York, Mississippi Valley Trust Company, and New York Trust Company, the Other Appellants.

Endorsed: Filed Oct. 12, 1934. Frederick G. Campbell, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 305 to 346, inclusive, contain a true copy of the proceedings had and papers filed, made in accordance with the Praecipe for Record filed on October 5, 1934, and the Supplemental Praecipe filed on October 12, 1934.

In the Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
Debtor.

Nos. 5115 and 5159
CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY,
Appellant,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.,*
Appellees.

Nos. 5116 and 5160
THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
Appellant,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.,*
Appellees.

Nos. 5117 and 5161
MISSISSIPPI VALLEY TRUST COMPANY,
Appellant,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.,*
Appellees.

Nos. 5118 and 5162
HARRIS TRUST & SAVINGS BANK,
Appellant,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.,*
Appellees.

Nos. 5119 and 5163
THE NEW YORK TRUST COMPANY,
Appellant,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,
Appellees.

Nos. 5120 and 5164
RECONSTRUCTION FINANACE CORPORATION,
Appellant,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,
Appellees.

October Term, 1933, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 15th day of October, A. D. 1934.

(Seal)

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. 479

ORDER ALLOWING CERTIORARI—Filed December 3, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. 480

ORDER ALLOWING CERTIORARI—Filed December 3, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. 481

ORDER ALLOWING CERTIORARI—Filed December 3, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. 482

ORDER ALLOWING CERTIORARI—Filed December 3, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. 483

ORDER ALLOWING CERTIORARI—Filed December 3, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. 484

ORDER ALLOWING CERTIORARI—Filed December 3, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. 485

ORDER ALLOWING CERTIORARI—Filed December 3, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. 486

ORDER ALLOWING CERTIORARI—Filed December 3, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. 487

ORDER ALLOWING CERTIORARI—Filed December 3, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. 488

ORDER ALLOWING CERTIORARI—Filed December 3, 1934

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SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. 489

ORDER ALLOWING CERTIORARI—Filed December 3, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. 490

ORDER ALLOWING CERTIORARI—Filed December 3, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

In The Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

Nos. 479 480

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., Respondents.

Nos. 481 482

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., Respondents.

Nos. 483 484

MISSISSIPPI VALLEY TRUST COMPANY, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., Respondents.

Nos. 485 486

HARRIS TRUST AND SAVINGS BANK, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., Respondents.

Nos. 487 488

THE NEW YORK TRUST COMPANY, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., Respondents.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

ISAAC H. MAYER,
CARL MEYER,
DAVID F. ROSENTHAL,
HERBERT A. FRIEDLICH,
Counsel for Petitioner, Continental Illinois National Bank and Trust Company of Chicago.

HENRY ROOT STERN,
BERTRAM F. SHIPMAN,
PAUL D. MILLER,
Counsel for Petitioner, The Chase National Bank of the City of New York.

T. M. PIERCE,
MILTON R. STAHL,
S. MAYNER WALLACE,
Counsel for Petitioner, Mississippi Valley Trust Company.

THEODORE S. CHAPMAN,
HAL C. BANGS,
PERRY M. CHADWICK,
Counsel for Petitioner, Harris Trust and Savings Bank.

EDWIN W. SIMS,
FRANKLIN J. STRANSKY,
JAMES P. CAREY, JR.,
Counsel for Petitioner, The New York Trust Company.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

In The Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

Nos._____

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., Respondents.

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Nos._____

THE NEW YORK TRUST COMPANY, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., Respondents.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

The above named petitioners, by the undersigned, their attorneys, respectfully pray that writs of certiorari issue to review the judgments of the Circuit Court of Appeals for the Seventh Circuit, entered on

July 23, 1934 (R. 327-31, 333-7), affirming an injunctional order of the District Court for the Northern District of Illinois, Eastern Division, entered on November 22, 1933. (R. 101-104).

PRINCIPAL QUESTIONS PRESENTED.

I. Has a district court, sitting in bankruptcy in a proceeding for the reorganization of a railroad under Section 77 of the Bankruptcy Act, power (contrary to the rule laid down by this Court in ordinary bankruptcy proceedings) summarily to enjoin the sale by a pledgee of validly pledged collateral, consisting of mortgage bonds of the pledgor railroad and of a subsidiary, when such sale is authorized by the pledge agreement and does not require judicial proceedings.

II. Whether, in such a proceeding, a district court sitting in one district may enjoin the sale of such collateral held by a bank which (a) is not a party to the proceeding, (b) is not a resident of or present within such district and (c) holds the collateral outside such district.

III. Does Section 77, as construed by the court below, violate the Fifth Amendment by impairing preexisting contract rights of petitioners (the pledgees) to sell the pledged collateral at any time permitted by the pledge agreement.

STATUTES INVOLVED.

The pertinent provisions of Section 77, Chapter VIII, of the Bankruptcy Act (Act of March 3, 1933, c. 204, 47 Stat. 1474; U. S. C. A., Title 11, Sec. 205) and other relevant statutes appear in the Appendix, pp. 29-33, *infra*.

STATEMENT.

On November 22, 1933, in a railroad reorganization proceeding under Section 77 of the Bankruptcy Act, entitled "In the Matter of The Chicago Rock Island and Pacific Railway Company, Debtor," (said railroad being herein referred to as "Debtor"), the District Court entered an order enjoining these petitioners and Reconstruction Finance Corporation (herein referred to as "R. F. C.") from selling collateral held by each of them as security for promissory notes of said Debtor, until further order of the court. (R. 101-104).

Three of the petitioners (The Chase National Bank of the City of New York, The New York Trust Company and Mississippi Valley Trust Company, referred to herein as the "nonresident banks"), unlike R. F. C. and the other two petitioners (Continental Illinois National Bank and Trust Company of Chicago and Harris Trust and Savings Bank, referred to herein as the "Chicago banks"), were not and are not residents of or doing business in the Northern District of Illinois. (R. 116-119). Neither any of the petitioners nor R. F. C. were made parties to the proceeding, nor were any thereof ever served with process. The only notice, received by any of them, of the petition (pursuant to which the injunction was issued) was by registered mail. (R. 55-56).

In response to such notice by mail, the nonresident banks, the Chicago banks and the R. F. C. appeared specially to object to the jurisdiction of the court over them (R. 68, 70, 71, 72, 73, 75). The R. F. C. and the Chicago banks also objected to the jurisdiction of the court (a) over the subject matter, and

(b) to grant the injunction in a summary proceeding. (R. 70, 71, 72, 75).

In order to obviate the question whether the proceeding in the trial court was a "controversy" or a "proceeding" in bankruptcy, each petitioner and R. F. C. took two separate appeals from the injunctional order,—one of which was allowed by the trial court and the other by the Circuit Court of Appeals. (R. 124, 133, 140, 148, 155, 163, 215, 229, 242, 254, 266, 278.) The two appeals of each defendant were consolidated for hearing in the Circuit Court of Appeals. (R. 287-298). None of the appeals was dismissed and on July 23, 1934 that court affirmed the injunctional order (R. 313-326) and entered twelve judgments accordingly. (R. 327-338).

This petition is filed jointly by all appellants below except R. F. C. A separate petition for writs of certiorari to review the judgments of the Circuit Court of Appeals is being filed by R. F. C.

The injunctional order was entered upon the following record:

On June 7, 1933 the Debtor filed in the District Court its original petition, alleging that it was "unable to meet its debts as they mature," and that it desired to effect a plan of reorganization under Section 77 of the Bankruptcy Act. (R. 2-5). On the same day the court entered an order approving the petition as properly filed, and directing the Debtor, pending further order, to operate its railroads, subject to supervision of the court. (R. 6-10). Thereafter, the Debtor conducted its business pursuant to said order until November 22, 1933, on which date the court appointed

trustees of the Debtor's property. (R. 105-107). By orders entered August 28, 1933 and October 24, 1933, petitions of certain of the Debtor's subsidiaries to effect plans of reorganization under said Section 77 in connection with, or as a part of, the plan of reorganization of the Debtor were approved by the District Court. (R. 26-28, 97-99).

On September 26, 1933, prior to the appointment of trustees, the Debtor filed in the District Court a petition (R. 37-43) which alleged, in substance, that it was indebted to R. F. C. in the sum of $13,659,877.58 evidenced by six notes, dated on or prior to April 1, 1933 and due March 1, 1934; that said notes were secured by pledge to R. F. C. of collateral, described in detail, consisting chiefly of mortgage bonds of the Debtor and of its subsidiaries aggregating approximately $40,000,000 in principal amount; and that all interest on said notes had been paid to the date of the petition, the next installment being due October 1, 1933. The petition further alleged that the Debtor was also indebted to these petitioners in the total face amount of $3,866,923.34 (after application of deposits by two of petitioners), evidenced by notes payable to the respective petitioners, dated August 1, 1932 and due March 1, 1934, and secured by pledge to each of petitioners of mortgage bonds of the Debtor and of one of its subsidiaries in the aggregate face amount of $14,409,000. (R. 39-40).

From exhibits attached to said Debtor's petition (R. 52-55) it appears that each of the notes held by the petitioners provides that it shall become due in case of, among other events, (1) nonpayment of interest, (2) the insolvency of the Debtor, (3) the appointment of a receiver for the Debtor, or (4) nonpayment of in-

terest on any of said notes of the Debtor held by R. F. C. (R. 53); and each note provides that (R. 54):

> "Upon default of any kind hereunder, the payee may sell in * * * New York City, or elsewhere, * * * all or any of the security held for the payment of this note, at any broker's board or at public or private sale, without * * *. notice * * * and the payee may be the purchaser of any or all property, rights and/or interests so sold * * *."

The Debtor's petition alleged further that the value of the collateral securing each of said notes was substantially in excess of the amount of said note; that if the holders of the notes should sell said collateral it would cause a substantial and irreparable loss to the trust estate; and that a forced sale thereof "at the present time * * * *might* result" (Italics ours) in a substantial deficiency judgment against the Debtor, and would dilute the respective interests in the trust estate of the holders of the Debtor's bonds, of other creditors of the trust estate, and of the Debtor itself. (R. 40-41). The petition asked for instructions of the court as to the payment of interest due R. F. C. on October 1, 1933 (September 30, 1933), and also that the court determine (R. 43):

> "* * * whether the Court should enjoin and restrain the holders of the said collateral notes, *in the event of default in the payment of interest thereon,* or other default therein, from selling and converting the said collateral, or any part thereof." (Italics ours).

In support of their respective special appearances the nonresident banks filed affidavits which disclosed that they were not residents of or present within the Northern District of Illinois, were not parties to the proceeding, and had never been served with process therein. (R. 116-119).

A Protective Committee for the Debtor's First and

Refunding Mortgage Bonds appeared and filed the affidavit of its Chairman, Dwight S. Beebe (R. 113-115), which alleged that approximately $145,749,050 face amount of bonds and stock of the Debtor's System were pledged with Trustees of three of the Debtor's mortgages; "that in certain events described in the Indentures under which the aforesaid Trustees are acting, such Trustees are given the right to sell such collateral"; that a decision that the R. F. C. and the banks should not be enjoined from selling the collateral held by them "would also determine that the Trustees under the three bond issues mentioned above had the right to sell the $145,749,050 total face amount of capital obligations of the System pledged with them"; and that the "*position of this Committee* * * * is that the interests of the bondholders * * * and of the Debtor's estate generally would best be served * * * by a decision requiring all holders of secured claims to retain their collateral until a plan of reorganization is prepared, approved and put into effect." (Italics ours)

Thereupon, on the same day (September 26, 1933), the court authorized the Debtor to pay interest due R. F. C. on September 30, 1933, but reserved decision on the matter of the injunction. (R. 75-77).

Thereafter, on November 22, 1933, the District Court entered an order restraining these petitioners and R. F. C. from selling or disposing of the collateral held by them, or any part thereof, until further order of the court. (R. 101-104). This order was entered by the trial judge without any opinion, written or oral, and *solely upon said petition of the Debtor, the Beebe affidavit, and the affidavits filed by the nonresident banks,* which latter affidavits merely questioned the court's jurisdiction. From the recitals in the order, it appears that the judge based it on the ground that a sale of the collateral would interfere with a reorganization and

that therefore the court had ample power to enjoin the sale. (R. 103-104).

Upon the appeals from this injunctional order the Circuit Court of Appeals held:

1. That the injunction was an exercise of authority which was necessary to the effective use of the powers conferred upon the District Court by Section 77. (R. 324).[1]

2. That the jurisdiction of the District Court under Section 77 is "coextensive with the territorial boundaries of the United States," and therefore the injunction was lawful notwithstanding the fact that the nonresident banks, and the collateral held by them, were not within the Northern District of Illinois. (R. 322).

3. That the injunction merely restrained the "pursuit of a remedy" by those enjoined, and therefore (a) could be issued in a summary proceeding, and (b) did not violate the Constitution of the United States. (R. 324).

---

1. Two misapprehensions of fact, which seem strongly to have influenced the Circuit Court of Appeals in affirming the injunctional order, should be noted:

(a) The court stated (R. 325) that

> "Appellants have received and will probably continue to receive the prompt payment of interest upon their claims secured by the debtor's and its subsidiaries' bonds."

Although interest was paid, as due, upon the Debtor's notes held by the banks and R. F. C. until the injunction, *no interest whatever, due thereafter, has been paid.* (R. 341-342). The notes held by petitioners and R. F. C. matured on March 1, 1934 (R. 38-39), and the principal thereof has not been paid.

(b) The court also stated (R. 325) that the District Court—

> "sought to protect the great mass of debtor's creditors *without injuring the position of appellants* • • •." (Italics ours.)

The fact is that when the Debtor's petition for an injunction was filed, the collateral held by these petitioners as security for notes of the Debtor had a market value (based on last prior sales on the New York Stock Exchange) of $4,269,000, which was in excess of the amount of the indebtedness ($3,866,923.34) then owing to petitioners. At the time of the writing of this petition (October 15, 1934), the market value of said collateral (on the same basis) is $2,614,755. These figures indicate that already the injunction has damaged the petitioners in excess of $1,250,000.

REASONS FOR GRANTING THE WRITS.

I.

The Decision of the Circuit Court of Appeals—That a District Court, in a Railroad Reorganization Proceeding Under Section 77 of the Bankruptcy Act, Has Power to Enjoin a Pledgee from Selling, in Accordance with the Contract of Pledge, Mortgage Bonds Issued by the Railroad or Its Subsidiaries and Validly Pledged by the Railroad to Secure Its Debt—Asserts a Power Which This Court Has Held Does Not Exist in an Ordinary Bankruptcy Proceeding and Raises a Question of Far Reaching Importance Which Should Be Settled by This Court.

A. Since the decision of this Court in *Jerome* v. *McCarter,* 94 U. S. 734, 739 (1876), it has been settled law that a bankruptcy court is without authority to enjoin the sale of collateral validly pledged by the bankrupt to, and in the possession of, the pledgee, even though the collateral consists of mortgage obligations of the bankrupt of a par value in excess of the amount of the loan. See *In re Ironclad Mfg. Co.,* 192 Fed. 318 (C. C. A. 2nd, 1912); *Worth* v. *Marshall Field & Co.,* 240 Fed. 395, 397 (C. C. A. 4th, 1917); *Turner* v. *Metropolitan Trust Co.,* 207 Fed. 495, 499-500 (C. C. A. 9th, 1913). The decision below overturns this well settled rule as applied to railroad reorganization proceedings.

B. The decision will affect a large number of similar cases and, consequently, a large amount of collateral loans.

There are now pending 12 proceedings under Section 77 for the reorganization of interstate railroad systems.[2] The actual number of railroads involved is con-

2. According to a recent letter from the Director of the Bureau of Finance of the Interstate Commerce Commission, dated October 3, 1934.

siderably larger since, as in the instant case, the bankruptcy of the parent corporation usually results in the filing of petitions by all its subsidiaries.[3]

Moreover, the decision is of even wider application since it may apply not only to railroad reorganizations but also to corporate reorganizations generally. On June 7, 1934, Congress enacted Section 77 B of the Bankruptcy Act (U. S. C. A., Title 11, Sec. 207), which, in substance, makes applicable to corporations generally, including public utilities, the bankruptcy reorganization procedure set up by Section 77. Since the jurisdictional provisions of Sections 77 and 77 B are closely identical (see Comparative Table, Appendix, pp. 32-33, *infra*), it would seem that the decision of the court below may be applicable to proceedings under Section 77 B. The number of proceedings already instituted under Section 77 B is large.[4]

C. Literally, hundreds of millions of dollars of now outstanding collateral loans to railroads and other corporations—which must have been made, in part, in reliance upon the rule of law laid down in *Jerome* v. *McCarter*, 94 U. S. 734, *supra*, and numerous other later decisions—are seriously affected by the decision of the Circuit Court of Appeals.

Even if the decision be regarded as applicable only to collateral loans (a) to railroads (b) where the collateral consists of secured obligations of the railroad,

3. In the pending application of the Class 1 railroads to the Interstate Commerce Commission for rate increases, testimony was presented to the effect that at the present time twenty-six Class 1 railroads, operating 40,565 miles of track, are in the hands of trustees in bankruptcy or receivers. (See New York Herald Tribune, October 2, 1934, p. 23.)

4. A search of the docket of the District Court for the Southern District of New York discloses that in less than five months since the enactment of Section 77 B more than 80 proceedings under that section have been filed in that one district alone.

the aggregate amount of collateral loans affected by the decision is great, since, in recent years, the practice of railroads of pledging their own bonds as security for their own debts has assumed very large proportions. (See Hatch, "A Form of Depression Finance—Corporations Pledging Their Own Bonds," 47 Harv. L. Rev. 1093, 1095). In 1932 alone, the railroads of the United States issued over $1,000,000,000 of mortgage bonds, about 90% of which, it has been estimated, were pledged by the railroads to secure total borrowings of about $650,000,000. (See United States Daily, January 18, 1933, p. 2005; see also Hatch, *ibid,* 47 Harv. L. Rev. 1093, 1095). In one case alone, the Interstate Commerce Commission authorized the New York Central to issue $100,000,000 of its mortgage bonds by way of pledge for the railroad's own debts. (See 180 I. C. C: 155 and 349).

D. The decision may have far reaching effects upon industry and commerce.

Present day borrowings by railroads are primarily for short terms, and loans are chiefly obtained by the use of securities as collateral. In such transactions the borrower is able to secure the requisite funds with despatch by pledge of its securities; the lender is protected by the collateral pledged, and most important of all, his loan is liquid by reason of the right to realize quickly upon the collateral, if necessary. Until this Court has ruled upon the power of a court to enter an injunction under the circumstances involved in the instant case, pledgees, holding millions of dollars face amount of railroad mortgage bonds as collateral security for indebtedness of the railroad corporations issuing such bonds, are and will remain in doubt as to their rights in the event of default in the payment of the indebtedness secured or the institution of reorganization proceedings under

said Section 77, and hence in doubt as to the value of the security held. A further natural—almost inevitable—result of such uncertainty will be that railroads will find it increasingly difficult to make or renew short-time loans, even though adequate collateral security, from the point of view of value, is offered therefor.

II.

The Decision of the Court—That, in a Proceeding Under Section 77, a District Court in One District May Issue an Injunction Against the Sale of Pledged Collateral Held by One Who (a) Is Not a Party to the Proceeding, (b) Is Not Present Within Such District, and (c) Holds Possession of the Pledged Collateral Outside the District —Also Raises Issues of General Importance.

(*This reason is urged only by the nonresident banks.*)

A. Under long established policy "the jurisdiction of a district court *in personam* has been limited to the district of which the defendant is an inhabitant or in which he can be found." See *Robertson* v. *Railroad Labor Board*, 268 U. S. 619, 627 (1925). Whether Congress intended, *in the absence of language to that effect in the statute,* to effect a revolutionary departure from such policy is a question peculiarly within the jurisdiction of this Court.

B. The holding that the jurisdiction of the court in a proceeding under Section 77 is "coextensive with the territorial boundaries of the United States" raises problems in the administration of the statute, because of (a) the absence of any mechanism in Section 77, or elsewhere, for the functioning of a court with nationwide territorial limits, and (b) the lack of any provision authorizing the process of the court to run throughout the United States—a power which is vital if the court is to exercise, *as to the entire nation,* the

many powers conferred upon a bankruptcy court. See Section 2 of the Bankruptcy Act, as amended; U. S. C. A., Title 11, Sec. 11.

C. The decision of the court below imposes new and severe burdens upon many banks and business houses. Much business is conducted with little regard to intervening state or other lines. Business houses in New York, for example, are constantly dealing with railroads all over the country. If a district court may, in a proceeding under Section 77, issue an injunction against a creditor of the debtor *anywhere in the United States*, merely upon notice by mail, all creditors of the debtor must submit themselves to the jurisdiction of that court, although such creditors may be residents of New York and the bankruptcy proceedings may be pending in California, or else must assume the risk of court action adverse to their interests.

III.

This Court Should Determine Whether Section 77, As Construed by the Circuit Court of Appeals, Violates the Fifth Amendment in So Far as It Impairs Petitioners' Pre-existing Contract Rights to Sell the Pledged Collateral, Pursuant to the Terms of Valid Pledge Agreements Made Prior to the Effective Date of Section 77.

The holding of the court that the injunction did not deprive petitioners of a substantial right but merely of a remedy is based upon a premise, the error of which is established by the fact that the market value of the collateral held by these petitioners has actually declined more than $1,600,000 since the filing of the Debtor's petition for an injunction, and petitioners' loans are *now* more than $1,250,000 in excess of the present market value of the collateral and are *now* inadequately secured. (See footnote 1 (b), p. 8, *ante*.)

IV.

The Decision of the Circuit Court of Appeals Is in Conflict with Decisions of This Court Under the Bankruptcy Act. Moreover the Decision of the Court Below Is Not Supported by the Record.

Hiscock v. *Varick Bank of New York*, 206 U. S. 28, 40 (1907);

Jerome v. *McCarter*, 94 U. S. 734, 739 (1876); and

Acme Harvester Co. v. *Beekman Lumber Co.*, 222 U. S. 300, 310 (1911).

See also, *In re Ironclad Mfg. Co.*, 192 Fed. 318 (C. C. A. 2nd, 1912).

WHEREFORE it is respectfully submitted that the writs of certiorari herein prayed should issue.

October, 1934.

ISAAC H. MAYER,
CARL MEYER,
DAVID F. ROSENTHAL,
HERBERT A. FRIEDLICH,
Counsel for Petitioner, Continental Illinois National Bank and Trust Company of Chicago.

HENRY ROOT STERN,
BERTRAM F. SHIPMAN,
PAUL D. MILLER,
Counsel for Petitioner, The Chase National Bank of the City of New York.

T. M. PIERCE,
MILTON R. STAHL,
S. MAYNER WALLACE,
Counsel for Petitioner, Mississippi Valley Trust Company.

THEODORE S. CHAPMAN,
HAL C. BANGS,
PERRY M. CHADWICK,
Counsel for Petitioner, Harris Trust and Savings Bank.

EDWIN W. SIMS,
FRANKLIN J. STRANSKY,
JAMES P. CAREY, JR.,
Counsel for Petitioner, The New York Trust Company.

By DAVID F. ROSENTHAL,
HERBERT A. FRIEDLICH,
JAMES P. CAREY, JR.,
Of Counsel for said Petitioners.

BRIEF IN SUPPORT OF PETITION.

OPINIONS BELOW.

No opinion was rendered by the District Court. The opinion of the Circuit Court of Appeals (R. 313-326) is not yet reported.

JURISDICTION.

The judgments of the Circuit Court of Appeals were entered July 23, 1934. (R. 327-331, 333-337). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED, STATUTES INVOLVED, ETC.

The questions presented and a statement of the case appear in the petition. The applicable statutes are set forth in the Appendix, pp. 29-31, *infra*.

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred:

1. In holding that, in a proceeding under Section 77 of the Bankruptcy Act, a district court may summarily enjoin the sale (not requiring judicial proceedings) of collateral which has been validily pledged by the debtor as security for a

note of the debtor, when such collateral consists of secured bonds of the debtor and of a subsidiary corporation of a par value substantially in excess of the amount of the note.

2. In holding that, in such a proceeding, a district court sitting in one judicial district may lawfully enjoin the sale of collateral which has been validly pledged as security for a note of the debtor although the pledgee (a) is not a party to the proceeding, (b) is not a resident of or present within such judicial district, and (c) holds the pledged collateral beyond the limits of such district. (*To be urged only by the nonresident banks.*)

3. In holding that a sale of the collateral held by petitioners would hinder and prevent the preparation and consummation of a plan of reorganization of the Debtor.

4. In holding that Section 77 of the Bankruptcy Act, as construed and applied by that court, did not violate the Fifth Amendment of the Constitution as applied to petitioners.

5. In failing to hold that the District Court had no jurisdiction to enter the injunctional order.

ARGUMENT.

I.

Section 77 Does Not, Either Expressly or by Implication, Confer Jurisdiction on a Court of Bankruptcy to Enjoin a Pledgee from Selling Pledged Collateral Upon Default, Pursuant to the Terms of the Pledge Agreement, Even Though the Collateral Consists of Mortgage Bonds of the Debtor.

It has long been established law that, in ordinary bankruptcy proceedings, a pledgee cannot be deprived, in either a summary or a plenary proceeding, of his contract right to sell (at a sale not requiring judicial proceedings) collateral pledged to him by the bankrupt. The rule is the same even though the pledged collateral consists of secured obligations of the bankrupt himself. Section 77 does not, expressly or by implication, purport to change this rule. The "omnibus clause" of the Bankruptcy Act (see Bankruptcy Act, Section 2(15), Appendix, *infra*, page 29), which was in force long before the passage of Section 77, does not confer additional jurisdiction to enter the injunction.

The opinion of the Circuit Court of Appeals expressly avoids a discussion of the applicable decisions prior to the enactment of Section 77 (R. 319-320).

In *Hiscock* v. *Varick Bank of New York*, 206 U. S. 28 (1907), this Court held (p. 40) that, under Section 57(h) of the Bankruptcy Act[5] (which is not amended

5. See Appendix (*infra*, p. 29).

or affected by Section 77), a creditor has an absolute right to sell collateral, pledged by a bankrupt, in accordance with the contract of pledge.

In *Jerome* v. *McCarter*, 94 U. S. 734 (1876), this Court, considering the rights of a pledgee of the debtor's mortgage bonds, said (p. 739):

> "There is some proof that, when the company became bankrupt (Aug. 28, 1872), some of the bonds were held as collaterals for loans made to the company smaller in amount than the bonds pledged. But the bonds were subsequently sold by the pledgees, and the present holders hold them by absolute right. *The position that the pledgees could not sell the pledge after the adjudication in bankruptcy, is quite untenable. It is sustained by nothing in the Bankrupt Act.*
>
> "* * * Most of those bonds, though at first issued as collaterals for loans *made to the mortgagors*, have been sold, and they are now owned by the purchasers. There are some, it is true, that are still held in pledge; but *the pledgees have a clear right to use them, either by sale or by collection*, until the full amount of the debts due from the mortgagors is satisfied." (Italics ours).

This decision has never been questioned, limited or criticized by any later decision of this Court.

See also *Worth* v. *Marshall Field & Co.*, 240 Fed. 395, 397 (C. C. A. 4th, 1917); *Turner* v. *Metropolitan Trust Co.*, 207 Fed. 495, 499 (C. C. A. 9th, 1913); *In re Ironclad Mfg. Co.*, 192 Fed. 318 (C. C. A. 2nd, 1912); and *Rogers Brown & Co.* v. *Tindel Morris Co.*, 271 Fed. 475, 476 (D. C. E. D. Pa., 1921).

Moreover, the injunctional order here in question was entered in a summary proceeding. (R. 55-58). Clearly in an ordinary bankruptcy proceeding, the court, if it has neither actual nor constructive possession of the property in controversy, cannot adjudicate

a substantial adverse claim thereto in a summary proceeding without the consent of the adverse claimant. *Harrison* v. *Chamberlin,* 271 U. S. 191, 193 (1926); and *Acme Harvester Co.* v. *Beekman Lumber Co.,* 222 U. S. 300, 310 (1911). This Court has apparently recognized that the same rule applies to proceedings under Section 77. See *Ex Parte Baldwin,* 291 U. S. 610, 615 (1934).

Section 77 does not, by its terms, purport to broaden the powers of the district court to enjoin the sale of validly pledged collateral in cases where such sale does not involve *judicial proceedings.* In fact, the statute clearly indicates the contrary.

Subdivision (l) of said Section 77 provides:

> "(l) In addition to the provisions of section 11 of this Act for the staying of pending suits against the debtor, such suits shall be further stayed until after final decree (and)[6] the judge may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree."

Obviously, subdivision (l) was added for the purpose of granting to a bankruptcy court, sitting in railroad reorganization proceedings, the same powers with respect to *pending* suits, involving liens on property in the possession of the debtor, as it has, under the decisions of this Court in *Isaacs* v. *Hobbs Tie & Timber Co.,* 282 U. S. 734 (1931) and *Straton* v. *New,* 283 U. S. 318 (1931), in connection with the enjoining of suits to enforce liens on property in the possession of the bankrupt, commenced *after* the institution of bankruptcy proceedings.

Furthermore, under well settled rules of statutory

6. The word "and" in parentheses was omitted from the statute and is supplied to make sense.

construction, the granting of the power to "enjoin or stay the commencement or continuance of any *judicial proceeding* to enforce any lien upon the estate" impliedly denies power to enjoin the enforcement of liens by sales not involving judicial proceedings. See *In re Heath,* 144 U. S. 92, 93 (1892); *Durousseau* v. *United States,* 6 Cranch 307, 314 (1810); and *Sturges* v. *The Collector,* 12 Wall. 19, 27 (1870).

The pledges involved in this case could under the terms of the collateral notes, and normally would, be enforced through public or stock exchange sales not involving any judicial proceeding.

Subdivision (n) of said Section 77 provides:

> "(n) In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and his property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."

Certainly in an ordinary voluntary proceeding the court could not have entered the injunction in question, and there is nothing in Section 77 inconsistent with or changing the existing law in this respect.

Subdivision (a) of said Section 77, which provides that the court in a railroad reorganization proceeding, shall

> "during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located",

merely obviates the necessity of ancillary bankruptcy proceedings, and does not broaden the power of the bankruptcy court to issue injunctions in cases such as

this case. Section 77 confers no jurisdiction over property not in the possession of the debtor or the bankruptcy court nor over persons not within the district. (See Argument, *ante,* p. 18 and *infra,* p. 24). So far as jurisdiction over property is concerned, Section 77(a) merely restates the pre-existing law practically in the language used by this Court in *Acme Harvester Co.* v. *Beekman Lumber Co.,* 222 U. S. 300, 307 (1911), in *Straton* v. *New,* 283 U. S. 318, 320 (1931), in *Gross* v. *Irving Trust Company,* 289 U. S. 342, 344 (1933) and in *Ex Parte Baldwin,* 291 U. S. 610, 615 (1934).

For example, this Court, in *Acme Harvester Co.* v. *Beekman Lumber Co., supra,* said (p. 307) that it was the purpose of the bankruptcy law

> "to place the property of the bankrupt under the control of the court, wherever it is found * * *."

Nevertheless, this broad jurisdiction over the property of the debtor wherever located did not permit a bankruptcy court to interfere, by injunction, with a pledgee's sale of property where the pledge was valid and the pledged property in the actual possession of the pledgee at the time of the filing of the bankruptcy petition. See *Hiscock* v. *Varick Bank of New York,* 206 U. S. 28, 40 (1907) and *Ex Parte Baldwin,* 291 U. S. 610, 615 (1934).

Although conceding that no express authority for the injunction is conferred by said Section 77, the Circuit Court of Appeals affirmed the order of the District Court on the theory that the power to issue the injunction was conferred as an incident to other powers expressly conferred, saying (R. 324):

> "Our conclusion is that the restraining order is an exercise of authority on the part of the court which was necessary to the effective use of the powers expressly conferred by Congress through this amendment. In short, it was the exercise of

> a power which was incident to those expressly conveyed by Congress to the court."

Sub-clause (15) of Section 2 of the Bankruptcy Act, the "omnibus clause" referred to by the Circuit Court of Appeals (R. 318, footnote*) and apparently relied upon (R. 324), is not new. The present (1898) Act has always included this section which grants general powers to bankruptcy courts to—

> "make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this Act; * * *"

This Court, however, referring to said Section 2 (15) in *Ginsberg & Sons* v. *Popkin,* 285 U. S. 204 (1932), said (p. 208):

> "General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment. * * * Specific terms prevail over the general in the same or another statute which otherwise might be controlling."

The rights of a pledgee, after bankruptcy of the pledgor, are specifically dealt with in other parts of the Bankruptcy Act, for example in Sections 57 (h) and 67(d).[7] Moreover no reason exists why Section 2(15) should confer upon a district court, in a proceeding under Section 77, a power which this Court and other courts have consistently denied to a district court in an ordinary bankruptcy proceeding. There is no such distinction between a bankruptcy *reorganization* proceeding (under Section 77 or Section 77B) and the ordinary bankruptcy *liquidation* proceeding which requires by dubious implication a power in the former proceeding, which the courts have held not to be necessary, or even desirable, in the latter.

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7. See Appendix (*infra*, p. 29).

II.

The District Court Had No Jurisdiction to Issue an Injunction Against the Nonresident Banks.

(*This point is argued only by the nonresident banks*).

It is clear that the District Court would have been without authority to issue an injunction against the nonresident banks upon the facts in this case in an ordinary bankruptcy proceeding. See *Acme Harvester Co.* v. *Beekman Lumber Co.*, 222 U. S. 300, 310 (1911); *Isaacs* v. *Hobbs Tie & Timber Co.*, 282 U. S. 734, 738 (1931); *Progressive Building & Loan Co.* v. *Hall*, 220 Fed. 45 (C. C. A. 4th, 1914).

The court below held, however, that under Section 77 the jurisdictional limits of the District Court are "co-extensive with the territorial boundaries of the United States" and that therefore it could issue a decree *in personam* against the nonresident banks even though they were not within, and held the pledged collateral beyond, the geographical limits of the district.

There is nothing in Section 77, however, which gives to the district court a wider jurisdiction *in personam* than is possessed by a bankruptcy court generally. In fact, the contrary affirmatively appears.

As above pointed out, subdivision (n) of Section 77 provides (p. 20, *ante*):

> "In proceedings under this section and consistent with the provisions thereof, *the jurisdiction and powers of the court * * * shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed.*" (Italics ours.)

The statute thus expressly provides that, *unless changed by Section* 77, the jurisdiction and powers of

the court shall be *those possessed by a bankruptcy court in the ordinary bankruptcy proceeding.*

Section 77 contains no provision which expressly or by necessary implication either (a) extends the territorial limits of the district court or (b) extends the power of the court to issue decrees *in personam* against one not within its geographical limits.

The provision upon which the court below based its decision (R. 322) is Section 77 (a), which provides in part (Appendix, *infra*, p. 30):

> "The petition shall be filed with the court in whose *territorial jurisdiction* the railroad corporation * * * has had its principal * * * office, * * *. If the petition is * * * approved, the court * * * shall * * * *have exclusive jurisdiction of the debtor and its property wherever located.*" (Italics ours.)

The particular phrase in question ("exclusive jurisdiction of the debtor and its property wherever located"), which follows a sentence in which the words "territorial jurisdiction" are unmistakably used to refer to the *geographical limits of the judicial district*, does not expressly or by necessary implication make the jurisdictional limits of the district court "co-extensive with the territorial boundaries of the United States."

In terms, the court is given exclusive jurisdiction of (a) "the debtor," and (b) "its property wherever located." This language may be given full effect without "interpreting" it as by *implication* amending the statute fixing the territorial limits of the District Court, or as giving to that court a wider jurisdiction *in personam* with respect to creditors of the debtor than is possessed by a bankruptcy court generally with respect to creditors of the bankrupt.

Convincing proof of the meaning of the phrase "ex-

clusive jurisdiction of the debtor and its property wherever located" is found in decisions of this Court, wherein the Court has repeatedly defined the jurisdiction of a bankruptcy court with respect to the person and property of the bankrupt in language *almost identical to that of the phrase in question. Gross* v. *Irving Trust Co.*, 289 U. S. 342, 344 (1933); *Straton* v. *New*, 283 U. S. 318, 320-321 (1931); *Isaacs* v. *Hobbs Tie & Timber Co.*, 282 U. S. 734, 737 (1931); and *Mueller* v. *Nugent*, 184 U. S. 1, 14 (1902).

Thus, in *Gross* v. *Irving Trust Co., supra*, this Court said (p. 344):

> "Upon adjudication of bankruptcy, title to all the property of the bankrupt, *wherever situated*, vests in the trustee as of the date of filing the petition in bankruptcy. The *bankruptcy court has exclusive jurisdiction, and that court's possession and control of the estate cannot be affected by proceedings in other courts, state or federal.*" (Italics ours)

The use by Congress, in fixing the jurisdiction of the court over the person and property of the debtor in a proceeding under Section 77, of language almost identical with that employed over a long period of years by this Court in describing the jurisdiction of a district court over the person and property of a bankrupt is altogether persuasive evidence that Congress intended that such jurisdictions should be the same. See *The "Abbotsford,"* 98 U. S. 440, 444 (1878).

By statutory provision of long standing, rarely departed from by Congress, "the jurisdiction of a district court *in personam* has been limited to the district of which the defendant is an inhabitant or in which he can be found," and *"It is not lightly to be assumed that Congress intended to depart from a long established policy."* (Italics ours) *Robertson* v. *Railroad*

Labor Board, 268 U. S. 619, 627 (1925); *General Investment Co.* v. *Lake Shore Railway,* 260 U. S. 261 (1922).

The court below placed reliance upon the fact that Section 77 "was intended to * * * exclude ancillary receivership proceedings in bankruptcy cases wherein railroad corporations were the bankrupts." (Rec. 322). But, while Congress intended to eliminate ancillary reorganization proceedings *as such,* with the attendant appointment of ancillary "receivers," it did not declare that the territorial limits of the court should be co-extensive with the United States; nor did it declare that the process of the court might run anywhere in the United States; nor did it give the court such a jurisdiction as necessarily to imply an intent to do either of these things. Just as a bankruptcy court—*though having exclusive jurisdiction of the bankrupt and his property wherever located*—is required to authorize proceedings in a foreign jurisdiction when such step is necessary in order to compel or prevent action by one over whom it has no personal jurisdiction (see cases cited p. 23, *ante*), so the district court under Section 77 is of necessity remitted to similar action in order to accomplish a similar end.

III.

Section 77, as Construed by the Circuit Court of Appeals, Impairs the Contract Rights of Petitioners, Existing at the Date of the Passage of the Act, to Sell the Pledged Collateral, and Therefore Is in Violation of the Fifth Amendment as Applied to Petitioners.

The pledges of collateral security to petitioners were made on August 1, 1932. (R. 38-40, 52-53). Section 77 became effective on March 3, 1933.

This Court has held many times that the Fifth Amendment to the Constitution prohibits the passage by Congress of legislation which operates to impair the obligations of existing contracts. *Lynch* v. *United States,* 292 U. S. 571, 580 (1934); *Hyland* v. *Russell Car & Snow Plow Company,* 279 U. S. 253, 261 (1929); and *Adkins* v. *Children's Hospital,* 261 U. S. 525, 545 (1923).

By far the most important right of a pledgee is the privilege of selling the pledged property at any time after default at which such a sale becomes, in the judgment of the pledgee, advisable. See *In re Hudson River Navigation Corporation,* 57 F. (2d) 175, 176 (C. C. A. 2nd, 1932). The injunctional order in question prohibits a sale of the collateral except at such time or times as the court (*not the pledgee*) may determine that a sale is advisable in the best interests not only of the pledgee, but of the Debtor and its other creditors—and perhaps even of its stockholders. Accordingly a wholly indefinite postponement of a pledgee's right to select the time to realize on the pledged security deprives him not merely of a remedy but of the very essence of the contract. See *Louisiana* v. *City of New Orleans,* 102 U. S. 203, 206 (1880). Section 77, if construed to permit such an injunction, permits the impairment of existing contracts so far as pledgees to whom pledges were made prior to the adoption of said Section 77 are concerned.

The constitutional power of Congress to pass laws "on the subject of bankruptcies" clearly permits legislation which operates to discharge in bankruptcy the *personal* obligation of a debtor to pay his creditors. Congress has, however, no power under the "bankruptcy" clause of the Constitution to pass laws impairing the obligations of existing contracts made by a

bankrupt, if such contracts do not obligate the bankrupt to make any payment to his creditors and merely permit creditors to recover, without the intervention of judicial proceedings, the amount of the debt out of property pledged by the bankrupt. No decision of this Court has ever held that existing rights to enforce liens on or interests in property of the bankrupt, not in the actual or constructive possession of the bankruptcy court, are or may be in any manner impaired by bankruptcy proceedings, so long as such enforcement does not involve judicial proceedings.

Respectfully submitted,

ISAAC H. MAYER,
CARL MEYER,
DAVID F. ROSENTHAL,
HERBERT A. FRIEDLICH,
Counsel for Petitioner, Continental Illinois National Bank and Trust Company of Chicago.

HENRY ROOT STERN,
BERTRAM F. SHIPMAN,
PAUL D. MILLER,
Counsel for Petitioner, The Chase National Bank of the City of New York.

T. M. PIERCE,
MILTON R. STAHL,
S. MAYNER WALLACE,
Counsel for Petitioner, Mississippi Valley Trust Company.

THEODORE S. CHAPMAN,
HAL C. BANGS,
PERRY M. CHADWICK,
Counsel for Petitioner, Harris Trust and Savings Bank.

EDWIN W. SIMS,
FRANKLIN J. STRANSKY,
JAMES P. CAREY, JR.,
Counsel for Petitioner, The New York Trust Company.

APPENDIX.

Statutes Involved.

Section 2(15) of the Bankruptcy Act (July 1, 1898, Ch. 541, Sec. 2(15), 30 Stat. 545; U. S. C. A., Title 11, Sec. 11 (15)):

> "The courts of bankruptcy * * * are invested * * * with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings. * * * to * * * (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this Act."

Section 57(h) of the Bankruptcy Act (July 1, 1898, Ch. 541, Sec. 57(h), 30 Stat. 560; U. S. C. A., Title 11, Sec. 93 (h)):

> "(h) The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance."

Section 67(d) of the Bankruptcy Act (July 1, 1898, Ch. 541, Sec. 67(d), 30 Stat. 564, as amended by Act of June 25, 1910, Sec. 12, 36 Stat. 842; U. S. C. A. Title 11, Sec. 107(d)):

> "(d) Liens given or accepted in good faith and

not in contemplation of or in fraud upon this Act and for a present consideration * * * shall, to the extent of such consideration only, not be affected by anything herein."

Section 77, sub-clause (a), of the Bankruptcy Act (July 1, 1898, Ch. 541, Sec. 77(a), as added by Act of March 3, 1933, Ch. 204, Sec. 1 (§ 77(a)), 47 Stat. 1474; U. S. C. A., Title 11, Sec. 205(a)):

"(a) Any railroad corporation may file a petition stating that the railroad corporation is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization. * * * Upon the filing of such a petition, the judge shall enter an order either approving it as properly filed under this section, if satisfied that such petition complies with this section and has been filed in good faith, or dismissing it if not so satisfied. If the petition is so approved, the court in which such order approving the petition is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located. * * *"

Section 77(l) of the Bankruptcy Act (July 1, 1898, Ch. 541, Sec. 77(l), as added by Act of March 3, 1933, Ch. 204, Sec. 1 (§ 77(l)), 47 Stat. 1481, U. S. C. A. Title 11, Sec. 205(l)):

"(l) In addition to the provisions of section 11 of this Act for the staying of pending suits against the debtor, such suits shall be further stayed until after final decree (and)[1] the judge may, upon notice and for cause shown, enjoin or stay the com-

1. The word "and" in parentheses was omitted from the statute and is supplied to make sense.

mencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree."

Section 77(n) of the Bankruptcy Act (July 1, 1898, Ch. 541, Sec. 77(n), as added by Act of March 3, 1933, Ch. 204, Sec. 1 (§ 77(n)), 47 Stat. 1481; U. S. C. A. Title 11, Sec. 205(n)):

"(n) In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and his property, shall be the same as if a voluntary petition for adjudication had been entered on the day when the debtor's petition was filed."

Comparative Statement of the Jurisdictional Provisions of Section 77 and Section 77B of the Bankruptcy Act.

Section 77(a):

"(a) * * * the court in which such order approving the petition is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located."

Section 77B(a):

"(a) * * * the court in which such order approving the petition or answer is entered shall, during the pendency of the proceedings under this section, have exclusive jurisdiction of the debtor and its property wherever located for the purposes of this section * * *."

Section 77(c)(1):

"(c) * * * (1) * * * a trustee or trustees * * * who shall have all the title and, subject to the control of the judge and consistently with the provisions of this section, shall exercise all the powers of a trustee appointed pursuant to section 44 or any other section of this Act * * *."

Section 77B(c)(2):

"(c) * * * (2) * * * every such trustee * * * shall have all the title and shall exercise, subject to the control of the judge and consistently with the provisions of this section, all the powers of a trustee appointed pursuant to section 44 of this Act * * *; * * *."

Section 77(l):

"(l) In addition to the provisions of section 11 of this Act for the staying of pending suits against the debtor, such suits shall be further

stayed until after final decree (and)[2] the judge may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree."

Section 77B(c)(10):

"(c) * * * the judge * * * (10) in addition to the provisions of section 11 of this Act for the staying of pending suits against the debtor, may enjoin or stay the commencement or continuation of suits against the debtor until after final decree; and may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree * * *."

Section 77(n):

"(n) In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and his property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."

Section 77B(o):

"(o) In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition or answer was approved."

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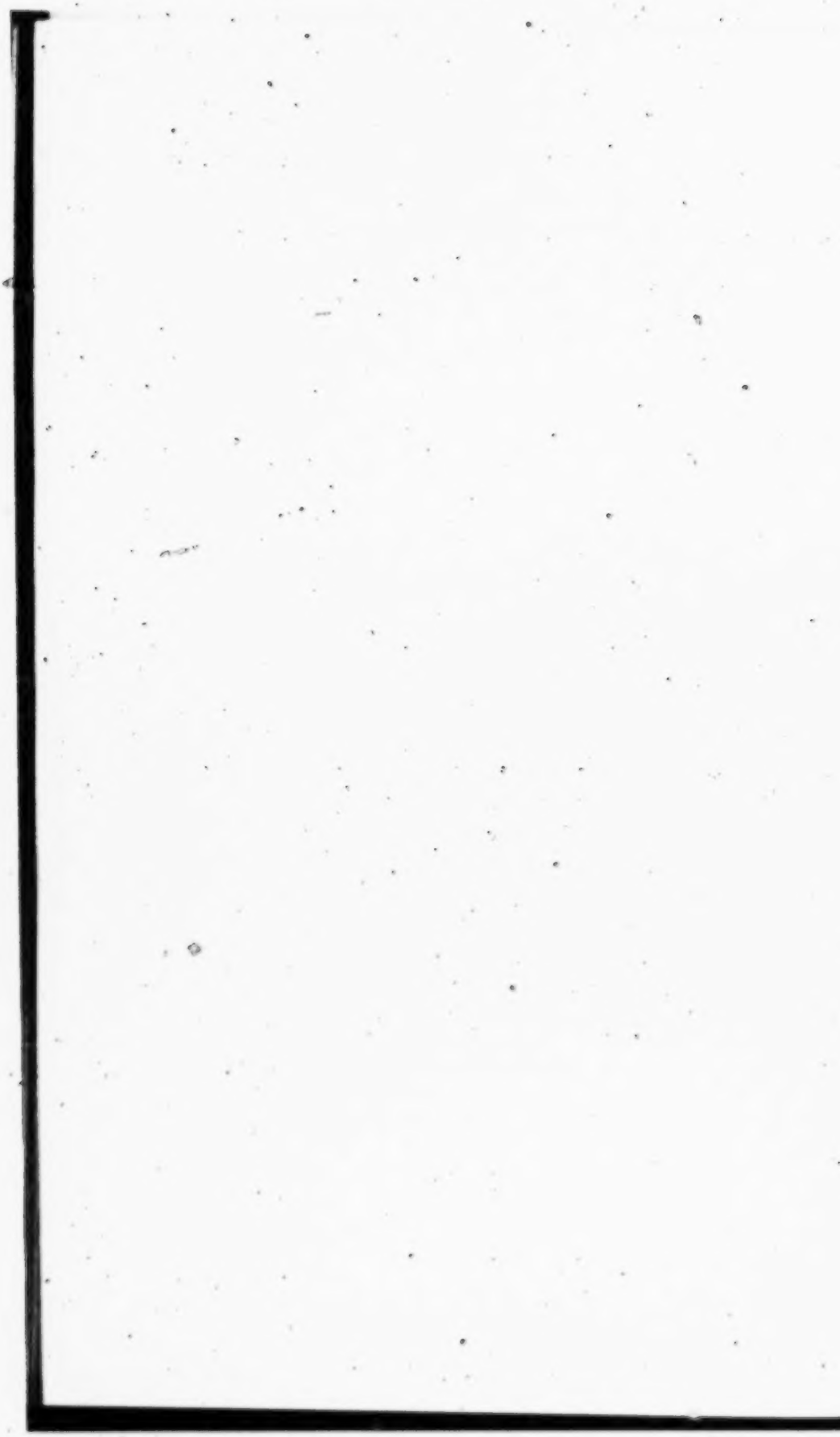
2. The word "and" in parentheses was omitted from the statute and is supplied to make sense.



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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

IN THE MATTER

of

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

Nos. 479 and 480

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*, Respondents.

Nos. 481 and 482

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*, Respondents.

Nos. 483 and 484

MISSISSIPPI VALLEY TRUST COMPANY, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*, Respondents.

Nos. 485 and 486

HARRIS TRUST AND SAVINGS BANK, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*, Respondents.

Nos. 487 and 488

THE NEW YORK TRUST COMPANY, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*, Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR PETITIONERS.

ISAAC H. MAYER,
CARL MEYER,
DAVID F. ROSENTHAL,
HERBERT A. FRIEDLICH,
Counsel for Petitioner, Continental Illinois National Bank and Trust Company of Chicago.

T. M. PIERCE,
MILTON R. STAHL,
S. MAYNER WALLACE,
Counsel for Petitioner, Mississippi Valley Trust Company.

EDWIN W. SIMS,
FRANKLIN J. STRANSKY,
JAMES P. CAREY, Jr.,
Counsel for Petitioner, The New York Trust Company.

HENRY ROOT STERN,
PAUL D. MILLER,
LEDLIE A. DEBOW,
Counsel for Petitioner, The Chase National Bank of the City of New York.

THEODORE S. CHAPMAN,
HAL C. BANGS,
PERRY M. CHADWICK,
Counsel for Petitioner, Harris Trust and Savings Bank.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

IN THE MATTER

of

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
Debtor.

Nos. 479 and 480

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
Petitioner,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*

Nos. 481 and 482

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
Petitioner,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*

Nos. 483 and 484

MISSISSIPPI VALLEY TRUST COMPANY,
Petitioner,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*

Nos. 485 and 486

HARRIS TRUST AND SAVINGS BANK,
Petitioner,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*

Nos. 487 and 488

THE NEW YORK TRUST COMPANY,
Petitioner,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR PETITIONERS.

Opinions Below.

No opinion was rendered by the District Court. The opinion of the Circuit Court of Appeals (R. 313-326) is reported in 72 F. (2d) 443.

Jurisdiction.

The judgments of the Circuit Court of Appeals were entered July 23, 1934. (R. 327-331, 333-337.) The peti-

tion for certiorari was filed October 22, 1934, and was granted December 3, 1934. (R. 348.) The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

Questions Presented.

1. Whether a district court, in a proceeding for the reorganization of a railroad under Section 77 of the Bankruptcy Act, has power in a summary proceeding to enjoin the sale by a pledgee of validly pledged collateral, consisting of mortgage bonds (a) of the debtor railroad, and (b) of a subsidiary corporation, when such sale is authorized by the pledge agreement and does not require judicial proceedings.

2. Whether the District Court erred in holding that a sale of the pledged collateral would "prevent the orderly preparation and consummation of a plan of reorganization" and that an injunction against such sale was "necessary for the enforcement of the provisions of Section 77."

3. Whether Section 77, as construed by the courts below, violates the Fifth Amendment by depriving petitioners (the pledgees) of preexisting vested rights to sell the pledged collateral pursuant to the pledge agreements.

4. Whether, in a proceeding under Section 77, a district court sitting in one district may enjoin the sale of collateral validly pledged by the debtor to and held by a pledgee bank which (a) is not a party to the proceeding, (b) is not a resident of or present within such district, and (c) holds the collateral and note secured thereby outside such district.

Statutes Involved.

The pertinent provisions of Section 77 of the Bankruptcy Act (Act of March 3, 1933, c. 204, 47 Stat. 1474; U. S. C. A., Title 11, Sec. 205) and other relevant statutes appear in the Appendix, pp. 91-93, *infra*.

Statement.

On November 22, 1933, in a proceeding under Section 77 of the Bankruptcy Act, entitled "In the Matter of The Chicago, Rock Island and Pacific Railway Company, Debtor" (said company being herein referred to as "Debtor"), the District Court entered an order enjoining these petitioners and Reconstruction Finance Corporation (herein referred to as "R. F. C.") from selling collateral held by each of them as security for promissory notes of the Debtor, until further order of the Court (R. 101-104).

Three of the petitioners (The Chase National Bank of the City of New York, The New York Trust Company and Mississippi Valley Trust Company, referred to herein as the "non-resident banks"), unlike R. F. C. and the other two petitioners (Continental Illinois National Bank and Trust Company of Chicago, and Harris Trust and Savings Bank, referred to herein as the "Chicago banks"), were not and are not residents of or doing business in the Northern District of Illinois (R. 116-119). Neither any of the petitioners, nor R. F. C., was made a party to the proceeding, or was ever served with process. The only notice of the Debtor's petition (pursuant to which the injunction

was issued), received by petitioners or R. F. C., was by registered mail (R. 55-56).

In response to such notice by mail, each of petitioners and R. F. C. appeared specially to object to the jurisdiction of the court over it (R. 68, 70, 71, 72, 73, 75). The R. F. C. and the Chicago banks also each appeared specially to object to the jurisdiction of the court (a) over the subject-matter, and (b) to grant the injunction in a summary proceeding (R. 70, 71, 75).

To obviate the question whether the injunctional order involved a "controversy" or a "proceeding" in bankruptcy,[1] each petitioner and R. F. C. took two appeals from the order—one being allowed by the District Court and the other by the Circuit Court of Appeals (R. 124, 133, 140, 148, 155, 163, 215, 229, 242, 254, 266, 278). The two appeals of each appellant were consolidated for hearing in the Circuit Court of Appeals (R. 287-298). On July 23, 1934, that Court affirmed the injunctional order (R. 313-326) and, none of the appeals being dismissed, entered twelve judgments accordingly (R. 327-338).

The injunction was entered upon the following record:

On June 7, 1933, the Debtor filed in the District Court its original petition, alleging that it was "unable to meet its debts as they mature," and that it desired to effect a plan of reorganization under Section 77 of the Bankruptcy Act

---

[1] See *Taylor* v. *Voss*, 271 U. S. 176, 180 *et seq.* (1926); *Bryan* v. *Speakman*, 53 F. (2d) 463, 465 (C. C. A. 5th, 1931).

(R. 2-5). On the same day, the court entered an order approving the petition as properly filed, and directing the Debtor, pending further order, to operate its railroads, subject to supervision of the court (R. 6-10). Thereafter the Debtor conducted its business pursuant to said order until November 22, 1933, on which date the court appointed trustees of the Debtor's property (R. 105-107). By orders entered August 28, 1933, and October 24, 1933, petitions of certain of the Debtor's subsidiaries to effect plans of reorganization under Section 77 in connection with, or as a part of, the plan of reorganization of the Debtor were approved by the District Court (R. 26-28, 97-99).

On September 26, 1933, prior to the appointment of trustees, the Debtor filed in the District Court a petition (R. 37-43) which alleged, in substance, that the Debtor was indebted to R. F. C. in the sum of $13,659,877.58 evidenced by six notes, dated on or prior to April 1, 1933, and due March 1, 1934; that said notes were secured by pledge to R. F. C. of collateral, described in detail, consisting chiefly of mortgage bonds of the Debtor and of its subsidiaries aggregating approximately $40,000,000 in face amount; that all interest on said notes had been paid to the date of the petition, the next instalment being due October 1, 1933; that the Debtor was also indebted to these petitioners in the total face amount of $4,125,000 ($3,866,923.34 after application of deposits by two of petitioners), evidenced by notes payable to the respective petitioners, dated August 1, 1932, and due March 1, 1934, and secured by pledge to each of petitioners of mortgage bonds (a) of the Debtor, and (b) of a subsidiary corporation, in the aggregate face amount of

$14,409,000; that all interest due to date on the notes held by petitioners had been paid, and that by their terms no further interest would be due until February 1, 1934 (R. 40).[2]

From exhibits attached to the Debtor's petition (R. 52-55) it appears that each of the notes held by petitioners provides that it shall become due in case of, among other events, (1) nonpayment of interest, (2) the insolvency of the Debtor, (3) the appointment of a receiver for the Debtor, or (4) nonpayment of interest on any of the Debtor's notes held by R. F. C. (R. 53); and each note provides (R. 54) that:

> "Upon default of any kind hereunder, the payee may sell in * * * New York City, or elsewhere,

---

[2] The amounts of petitioners' loans and the collateral securing the same are as follows (R. 39):

		Collateral	
	Amount of Loan	First and Refunding 4% Gold Bonds	St. Paul and Kansas City Short Line 4½% Gold Bonds
Chase National Bank.....	$2,000,000	$3,253,000	$3,956,000
Continental Illinois Bank and Trust Company.....	1,250,000	1,307,000	2,758,000
New York Trust Company	500,000	800,000	1,010,000
Harris Trust and Savings Bank	250,000	405,000	490,000
Mississippi Valley Trust Company	125,000	190,000	240,000
	$4,125,000	$5,955,000	$8,454,000

This total of $4,125,000 was reduced to $3,866,923.34 by application of Debtor's deposits in the Continental and Mississippi Valley banks (R. 40).

The First and Refunding 4% Gold Bonds are mortgage bonds of the Debtor (R. 30, 45, 103). The St. Paul and Kansas City Short Line 4½% Gold Bonds are mortgage bonds of a corporation whose capital stock is owned by the Debtor and there is a statement in the record that they "are guaranteed as to principal and interest by the Debtor" (R. 20).

All the loans were made *with the approval of the Interstate Commerce Commission* (R. 14).

> * * * all or any of the security held for the payment of this note, at any broker's board or at public or private sale, without * * * notice * * * and the payee may be the purchaser of any or all property, rights and/or interests so sold * * * ."

The Debtor's petition alleged further that the value of the collateral securing each of said notes was substantially in excess of the amount of said note; that if the holders of the notes should sell said collateral it would cause a substantial and irreparable loss to the trust estate, and that a forced sale thereof "at the present time * * * *might* result" in a substantial deficiency judgment against the Debtor, and would dilute the respective interests in the trust estate of the holders of the Debtor's bonds, of other creditors, and of the Debtor itself (R. 40-41).

The petition asked for instructions as to the payment of interest due R. F. C. on October 1, 1933 [September 30, 1933; see R. 75-77], and that the court determine (R. 43) whether it——

> " * * * should enjoin and restrain the holders of the said collateral notes, *in the event of default in the payment of interest thereon,* or other default therein, from selling and converting the said collateral, or any part thereof; * * * " (Italics ours).

Having, as above stated, received notice by mail of said petition, petitioners appeared specially (R. 68-75). In support of their respective special appearances, the non-resident banks filed affidavits which disclosed that they were not residents of or present within the Northern District of Illinois, were not parties to the proceeding, and had never been served with process (R. 116-119).

A Committee for holders of the Debtor's First and Refunding Mortgage Bonds appeared and filed the affidavit of its Chairman, Dwight S. Beebe (R. 113-115), which alleged, *inter alia*, that approximately $145,749,050 face amount of bonds and stock of the "Debtor's System" were pledged with Trustees under three of the Debtor's mortgages; "that in certain events described in the Indentures under which the aforesaid Trustees are acting, such Trustees are given the right to sell such collateral"; that a decision that the R. F. C. and the banks should not be enjoined from selling the collateral held by them "would also determine that the Trustees under the three bond issues mentioned above had the right to sell the $145,749,050 total face amount of capital obligations of the System pledged with them"; and that the "*position of this Committee* • • • is that the interests of the bondholders • • • and of the Debtor's estate generally would best be served • • • by a decision requiring all holders of secured claims to retain their collateral until a plan of reorganization is prepared, approved and put into effect."

A Committee for holders of the Debtor's General Mortgage Bonds appeared and filed an answer objecting to the payment of interest on any collateral loans of the Debtor (R. 59-63).

On the same day (September 26, 1933), the court authorized the Debtor to pay interest due R.F.C. on September 30, 1933, but reserved decision on the matter of an injunction, the petitioners and R.F.C. agreeing in open court—upon the judge's statement that otherwise he was prepared to issue an injunction immediately—that *until the judge could reach a decision* they would not sell any of the collateral without five days' notice to the Debtor (R. 75-77).

Thereafter, on November 22, 1933, the court entered an order restraining these petitioners and R.F.C. from selling or converting the collateral held by them, or any part thereof, until further order of the court (R. 101-104). This order was entered by the trial judge without any opinion, written or oral, and *solely upon said petition of the Debtor*, the *Beebé affidavit, the General Mortgage Committee answer* (which did not concern itself with the injunction issue), *the special appearances, and the affidavits filed by the non-resident banks* (which latter merely questioned the court's jurisdiction over the persons of said banks).[3] From the recitals in the order, it appears (R. 103-104) that the trial judge held—

(1) That the injunction was necessary in order to permit the consummation of a plan of reorganization,

(2) That the court had power to issue any order which might be necessary for the enforcement of Section 77.

Upon the appeals, the Circuit Court of Appeals held—

(1) That the injunction was an exercise of authority which was *incident* to powers expressly conferred upon the District Court by Section 77 (R. 324).

(2) That the injunction merely restrained the "immediate pursuit of a remedy" and therefore (a) could be issued in a summary proceeding, and (b) did not violate the Fifth Amendment (R. 324).

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[3] At the hearing before the District Judge (at which three Protective Committees other than those above mentioned appeared and submitted briefs; see R. 314-315), it was orally stipulated by counsel for respondents that none of petitioners should be deemed to have waived its respective special appearance "by presenting oral argument or in filing briefs in opposition to the said application for an injunction" (R. 119). At no time did the parties stipulate, as asserted in the brief in opposition (p. 4), that the petitioners "might contest the merits of the application without waiving their special appearances."

(3) That the jurisdiction of a bankruptcy court under Section 77 is, in effect, "co-extensive with the territorial boundaries of the United States," and hence the injunction was lawful even though the non-resident banks, and the collateral held by them, were not within the Northern District of Illinois (R. 322).

Three serious misapprehensions of fact, which seem to have influenced the Circuit Court of Appeals strongly, should be noted:

(1) The court stated (R. 325) that—

> "Appellants have received and will probably continue to receive the prompt payment of interest upon their claims secured by the debtor's and its subsidiaries' bonds."

This statement is erroneous. Although interest was paid, as due, upon the notes held by petitioners and R. F. C. until the injunction (R. 17, 22, 36, 75), *no interest whatever, due thereafter, has been paid* (R. 341-342). The notes held by petitioners and R. F. C. matured on March 1, 1934 (R. 37-38), are now unpaid, and there is now due to petitioners approximately $310,000 in interest thereon.

(2) The court also stated (R. 324) that—

> "The controversy was restricted to a restraining of the *immediate* pursuit of a remedy by the creditors in order that a plan might be presented ***which would take care of appellants' claims in full*** but without special ind irreparable injury to the other creditors, * * *" (Italics ours).

As to this statement, no plan of reorganization was then before the District Court, none has since been presented, and recently the Debtor's Trustees have advised the Interstate Commerce Commission (see Appendix to R. F. C. brief, pp. 167-173) that there is no likelihood of any plan *even being formulated in the near future.* Moreover, if some time such a plan is presented and thereafter consummated, there was nothing before the court which warranted the statement that such plan would *"take care of appellants' claims in full."*

(3) The court also stated (R. 325) that the District Court—

> "sought to protect the great mass of debtor's creditors *without injuring the position of appellants* * * *." (Italics ours.)

The fact is that when the petition for an injunction was filed, the collateral held by petitioners possessed a market value (based on last prior sales on the New York Stock Exchange) of $4,153,355, *i. e.,* substantially in excess of the amount of the indebtedness then due from the Debtor. At the writing of this brief (January 12, 1935), the market value of said collateral (on the same basis) is $2,389,980. These figures indicate that already the injunction has damaged petitioners in excess of $1,700,000.

Specification of Errors.

The Circuit Court of Appeals erred—

(1) In holding that, in a proceeding under Section 77 of the Bankruptcy Act, a district court may in a summary proceeding enjoin a non-judicial sale of collateral which has been validly pledged by the debtor to

and is held by a pledgee as security for a note of the debtor, when such collateral consists of secured bonds (a) of the debtor and (b) of a subsidiary corporation of an aggregate par value substantially in excess of the amount of the note.

(2) In holding that a sale of the collateral held by petitioners would in effect prevent the orderly preparation and consummation of a plan of reorganization of the debtor.

(3) In holding that an injunction against the sale of the pledged collateral was necessary for the enforcement of the provisions of Section 77.

(4) In holding that Section 77, as construed by the courts below, did not violate the Fifth Amendment.

(5) In holding that, in a proceeding under Section 77, a district court sitting in one district can enjoin the sale of collateral which has been validly pledged by the debtor as security for a note, although the pledgee (a) is not a party to the proceeding, (b) is not a resident of or present within such district, and (c) holds the pledged collateral beyond the limits of such district. (*Urged only by the non-resident banks.*)

(6) In failing to hold that the District Court had no jurisdiction to enter the injunctional order.

SUMMARY OF ARGUMENT.

I.

By Section 77 (n), the jurisdiction of a bankruptcy court in a proceeding under Section 77 is the same as that of the court in an ordinary bankruptcy proceeding, unless such jurisdiction is inconsistent with Section 77.

A bankruptcy court is without jurisdiction in an ordinary bankruptcy proceeding to restrain a pledgee from exercising his contract right to sell collateral validly pledged to him by the bankrupt, even though the pledged collateral consists of secured obligations of the bankrupt. This want of jurisdiction exists because (a) the Bankruptcy Act expressly preserves the rights of the pledgee, and (b) a bankruptcy court has no jurisdiction (save in specified cases not here material) to deal with property not in the actual or constructive possession of the bankrupt.

Section 77 does not confer upon a bankruptcy court proceeding under that section jurisdiction to issue such a restraining order, since there is nothing in that section which negatives either of the two bases of the rule that a bankruptcy court is without authority to issue such a restraining order in an ordinary bankruptcy proceeding. In fact, various provisions of Section 77, as well as its legislative history, show clearly that Congress intended that the court should not possess authority to issue such a restraining order.

Section 2 (15) of the Bankruptcy Act, which provides generally that the court may issue such orders as may be necessary for enforcing the Act, is in no sense a source of jurisdiction, and confers no greater powers in the matter of enjoining sales of pledged collateral upon a court proceeding under Section 77 than it has in the past been construed to confer upon a bankruptcy court in an ordinary voluntary proceeding.

II.

If, as petitioners contend, the District Court was without jurisdiction to issue the injunction, a consideration of the effect, if any, of a sale of the pledged collateral upon a plan of reorganization is irrelevant. Petitioners contend, however, that there was no evidence before the District Court which sustains its

conclusion that the injunction was "necessary for the enforcement of the provisions of Section 77."

III.

As construed and applied by the courts below, Section 77 violates the Fifth Amendment by depriving petitioners of a substantial and pre-existing vested right, i. e., the right to sell the pledged collateral, upon default, at such time as they may select. Even if the injunction be held to affect merely petitioners' remedy, it was an unreasonable and arbitrary modification and postponement of such remedy, in violation of the Fifth Amendment.

IV.

The decision of the court below (which is predicated upon a theory applicable to Section 77-B of the Bankruptcy Act, as well as to Section 77) overturns a rule of bankruptcy law upon the basis of which, in part at least, literally hundreds of millions of dollars of now outstanding short-term collateral loans were made. The hazard of having short-term liquid loans converted into frozen loans for an indefinite period will inevitably tend sharply to restrict credit, contrary to one of the underlying purposes of Section 77, and at a time when Congress and the Administration are endeavoring to accomplish the opposite result.

V.

Apart from the foregoing contentions, the District Court was without jurisdiction to issue the injunction as to the non-resident banks.

The territorial limits imposed by Congress upon district courts apply to courts of bankruptcy. An injunction, operating ***in personam,*** can be predicated only on jurisdiction over the person enjoined, and the District Court had no jurisdiction over those petitioners which were not parties to the proceeding and which were neither residents of nor present within the Northern District of Illinois. The "exclusive jurisdiction" over the "debtor and its property wherever located" conferred upon the court by Section 77 (a) is the same as that possessed by a bankruptcy court in an ordinary bankruptcy proceeding. Section 77 does not extend either the territorial limits of the court or the court's jurisdiction ***in personam*** over non-residents.

ARGUMENT.

I.

Section 77 does not confer jurisdiction on the court to enjoin the sale of validly pledged collateral, even though such collateral consists of mortgage bonds of the debtor railroad.

The respondents, in effect, concede (Br. in Opp., pp. 11-15) that if this were an ordinary bankruptcy proceeding, the District Court would have been without authority to issue the injunction. But they contend, and the court below held, that in a proceeding under Section 77, a bankruptcy court has a wider jurisdiction in the matter of enjoining the sale of validly pledged collateral than is possessed by the court in an ordinary bankruptcy proceeding.

The principal pertinent provisions of Section 77 are (pp. 92-93, *infra*):

> (1) Section 77 (a), which provides that the court shall "have exclusive jurisdiction of the debtor and its property wherever located";
>
> (2) Section 77 (l), which provides that the judge may "enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate"; and
>
> (3) Section 77 (n), which provides that, consistent with the provisions thereof, the "jurisdiction and powers of the court" shall be "the same as if a voluntary petition for adjudication had been entered on the day when the debtor's petition was filed."

Since, under Section 77 (n), the "jurisdiction and powers of the court" are expressly "the same" as in a

voluntary bankruptcy proceeding, unless changed by Section 77 or inconsistent therewith, it is impossible to determine the jurisdiction of the court in a proceeding under Section 77, or to construe the provisions above quoted, with out a consideration of the jurisdiction of a bankruptcy court in an ordinary bankruptcy proceeding.

A. A bankruptcy court in an ordinary bankruptcy proceeding is without jurisdiction to enjoin a pledgee from selling pledged collateral, pursuant to the pledge agreement, even though the collateral consists of mortgage bonds of the bankrupt.

The collateral held by petitioners consists of (a) secured bonds of the Debtor, and (b) secured bonds of a subsidiary corporation of the Debtor (R. 20, 39, 103), all of which were pledged and delivered to petitioners more than four months prior to the filing of the Debtor's petition under Section 77 (R. 2, 38-39, 48-49, 52, 320). The validity of the pledges is conceded (Br. in Opp., p. 7; R. 324), and there is no suggestion that petitioners are seeking to sell the pledged collateral in a fraudulent manner or in any way not authorized by the pledge agreements. Upon these facts, it is clear that in an ordinary bankruptcy proceeding the District Court would have been without jurisdiction to issue the injunction.

By the great weight of authority, a bankruptcy court cannot enjoin the sale of securities or other collateral validly pledged to a creditor by the bankrupt more than four months prior to bankruptcy of the pledgor. *Jerome* v. *McCarter,* 94 U. S. 734, 739 (1876); *In re Mertens,* 144 Fed. 818, 823-824 (C. C. A. 2d, 1906), aff'd *sub. nom. Hiscock* v. *Varick Bank of New York,* 206 U. S. 28 (1907); *In re Hud-*

son River Navigation Corporation, 57 F. (2d) 175 (C. C. A. 2d, 1932); *In re Ironclad Mfg. Co.*, 192 Fed. 318 (C. C. A. 2d, 1912); *In re Mayer*, 157 Fed. 836 (C. C. A. 2d, 1907); *In re Ward*, 104 Fed. 985 (D. Mass., 1900); *In re Browne*, 104 Fed. 762 (E. D. Pa., 1900); *Mercer Nat. Bank of Harrodsburg* v. *White's Ex'r*, 32 S. W. (2d) 734, 737 (Ky., 1930); *Harvey* v. *Smith*, 61 N. E. 217 (Mass., 1901); accord, *In re Chaiken*, 10 Am. Bank. Rev. 14 (M. D. Pa., 1933); *In the matter of Charles P. Doelger*, 9 Am. Bank. Rev. 329 (S. D. N. Y., 1933), construing Section 74 of the Bankruptcy Act. See also *In re Jersey Island Packing Co.*, 138 Fed. 625, 628 (C. C. A. 9th, 1905).[4]

Similarly, in equity receiverships the court is without authority to enjoin the sale of pledged collateral validly held by a pledgee of the insolvent corporation. *International Banking Corporation* v. *Lynch*, 269 Fed. 242, 245 (C. C. A. 9th, 1920); *Risk* v. *Kansas Trust & Banking Co.*, 58 Fed. 45, 46 (C. C. D. Kan., 1893); *Rogers Brown & Co.* v. *Tindel Morris Co.*, 271 Fed. 475 (E. D. Pa., 1921); *Northern Pacific Railway* v. *Frank Waterhouse & Co.*, 279 Fed. 750, 751-752 (W. D. Wash., 1922); see also *Guaranty Trust Co.* v. *Fentress*, 61 F. (2d) 329 (C. C. A. 7th, 1932).

In *In re Hudson River Navigation Corporation*, 57 F. (2d) 175 (C. C. A. 2d, 1932), *supra*, a trustee in bankruptcy applied to an ancillary bankruptcy court (in the district where the pledgee resided and held the pledged collateral)

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[4] These cases should be distinguished from cases like *John Matthews, Inc.* v. *Knickerbocker Trust Co.*, 192 Fed. 557 (C. C. A. 2d, 1911), which involved a so-called pledge of the debtor's *wholly unsecured obligations*. In the case cited the court said (p. 558) that "in the distribution of bankrupt estates, *paper obligations issued without consideration as security for an indebtedness*" ought not be "permitted to increase it," and on this basis sustained an injunction against the sale of the so-called collateral.

for an order restraining the sale of certain collateral, consisting of notes of third parties, a chattel mortgage, and shares of corporate stock, which had been pledged by the bankrupt to a bank. The trustee's petition, which was closely similar to the Debtor's petition in the instant cases (R. 40), did not assert that the pledge was invalid, but alleged that a sale of the collateral at that time would result in a great sacrifice, that some of the pledged securities were essential to the conduct of the bankrupt's business, and that a reorganization was in contemplation at which all the bankrupt's property would be sold. In denying the injunction, the court said (p. 176):

> "* * * it has been generally understood that bankruptcy does not touch the power of a pledgee of shares of stock to close out his collateral."

The rule above set forth applies without discrimination to all kinds of pledged collateral rightfully in possession of the pledgee, including *secured bonds of the bankrupt itself in a face amount in excess of the indebtedness for which they were pledged. Jerome* v. *McCarter,* 94 U. S. 734, 739 (1876), *supra; In re Ironclad Mfg. Co.,* 192 Fed. 318 (C. C. A. 2d, 1912), *supra;* see also *Turner* v. *Metropolitan Trust Co.,* 207 Fed. 495 (C. C. A. 9th, 1913). Likewise, by the great weight of authority, in an equity receivership the court cannot restrain the sale of secured bonds of the insolvent corporation which have been *validly issued* and pledged by the corporation. *Guaranty Trust Co. of N. Y.* v. *Galveston City Railway Co.,* 87 Fed. 813, 815 (C. C. A. 5th, 1898); *Rogers Brown & Co.* v. *Tindel Morris Co.,* 271 Fed. 475, 476 (E. D. Pa., 1921); *Matter of Binghamton General Electric Company,* 38 N. E. 297 (N. Y., 1894), *supra.* See also *Dibert* v. *Wernicke,* 214 Fed.

673, 680 (C. C. A. 6th, 1914); *Bush* v. *Adams*, 165 Fed. 802 (S. D. N. Y., 1908).[5]

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[5] A seemingly contrary result was reached in *Mississippi Valley Trust Co.* v. *Railway Steel Spring Co.*, 258 Fed. 346 (C. C. A. 8th, 1919). The decision in that case, however, was predicated solely upon the law of Missouri, since "the transaction was a Missouri transaction." By the law of that State, a pledge by a corporation of its own *unissued mortgage bonds does not constitute an issuance of such bonds* (*Dibert* v. *D'Arcy*, 154 S. W. 1116 (Mo., 1913)) and the court's decision was expressly founded (see pp. 351, 352-353) on the fact that under the rule of the *Dibert* case, the bonds in question had never "been 'put in circulation for value.'"

The Missouri view is opposed to that of Illinois (see *Peacock* v. *Phillips*, 93 N. E. 415, 417 (Ill., 1910); *Gilbert* v. *Fossten Mfg. Co.*, 218 N. W. 451 (Minn., 1928)) and that of New York (see *Duncomb* v. *The N. Y., H. & N. R. Co.*, 84 N. Y. 190 (1881); *In re Progressive Wall Paper Corp.*, 229 Fed. 489 (C. C. A. 2d, 1916); *In re Waterloo Organ Co.*, 134 Fed. 345 (C. C. A. 2d, 1904), cert. den. 197 U. S. 621 (1904)). Indeed, Missouri appears to stand alone in denying a pledgee any right whatsoever to sell the pledged mortgage bonds of the pledgor. (See Hatch, "A Form of Depression Finance—Corporations Pledging Their Own Bonds," 47 H. L. Rev. 1093, 1117.)

That a pledge of its own mortgage bonds by a corporate debtor constitutes a valid "issue" thereof, see, in addition to cases cited at page 19, *supra*, *Gilchrist Transp. Co.* v. *Phenix Ins. Co.*, 170 Fed. 279 (C. C. A. 6th, 1909); *Equitable Trust Co.* v. *Great Shoshone & Twin Falls Water Power Co.*, 228 Fed. 516 (D. Idaho, 1915); *Atlantic Trust Co.* v. *Woodbridge Canal & Irrigation Co.*, 79 Fed. 842 (C. C., N. D. Cal., 1897); *In re Valecia Condensed Milk Co.*, 240 Fed. 338 (C. C. A. 7th, 1917); *Worth* v. *Marshall Field & Co.*, 240 Fed. 395 (C. C. A. 4th, 1917); *William Firth Co.* v. *South Carolina Loan & Trust Co.*, 122 Fed. 569 (C. C. A. 4th, 1903); *Rogers Brown & Co.* v. *Tindel Morris Co.*, 271 Fed. 475 (E. D. Pa., 1921); *Heath* v. *Port of Para*, 262 Fed. 815 (S. D. N. Y., 1920); *Smith* v. *Pillsbury*, 178 Pac. 719 (Cal. App., 1919); *Nelson* v. *Hubbard*, 11 So. 428 (Ala., 1892). And see, in this connection, *In re Paul De Laney Co., Inc.*, 26 F. (2d) 961 (C. C. A. 2d, 1928), and *Memphis & Little Rock Railroad* v. *Dow*, 120 U. S. 287 (1887).

Moreover, in the *Mississippi Valley Trust Co.* case, the court relied strongly on the fact that the pledged bonds were previously unissued treasury bonds (see p. 351). It does not appear on the record that that is the situation as to the bonds of the Debtor held by petitioners.

Thus, in *Jerome* v. *McCarter*, 94 U. S. 734 (1876), *supra*, the Court, speaking with reference to a pledge by the bankrupt of its own secured bonds, said (p. 739):

> "There is some proof that, when the company became bankrupt (Aug. 28, 1872), *some of the bonds were held as collaterals for loans made to the company smaller in amount than the bonds pledged.* But the bonds were subsequently sold by the pledgees, and the present holders hold them by absolute right. *The position that the pledgees could not sell the pledge after the adjudication in bankruptcy, is quite untenable.* It is sustained by nothing in the Bankrupt Act. The bonds were negotiable instruments. They passed by delivery, and even were there no expressed stipulation in the contracts of pledge, that the pledgee might sell on default of the pledgor, such a right is presumable from the nature of the transaction. *Certainly the Bankrupt Act has taken away no right from a pledgee secured to him by his contract.* [Note: Italics used hereinafter are always ours unless otherwise indicated.]

The rule that *a bankruptcy court* cannot enjoin the sale by a pledgee of validly pledged collateral in his possession rests upon two bases, either of which alone sustains the rule: (1) By the Bankruptcy Act itself the rights of the pledgee are preserved, and hence bankruptcy of the pledgor does not affect the lien or remedies of the pledgee (a factor which would inhibit an injunction *in any forum*), and (2) A bankruptcy court cannot, except in specified instances not here pertinent, adjudicate controversies with respect to property not in its possession.

1. The bankruptcy of the pledgor does not affect the lien of the pledgee or his right upon default to realize upon the pledged collateral.

By Section 67 (d) of the Bankruptcy Act (p. 91, *infra*):

> "Liens given or accepted in good faith and not in contemplation of or in fraud upon this Act and for a present consideration * * * shall, to the extent of such consideration only not be affected by anything herein."

And by Section 57 (h) (p. 91, *infra*):

> "The value of *securities* held by secured creditors shall be determined by converting the same into money *according to the terms of the agreement* pursuant to which such securities were delivered to such creditors or * * *."

Construing these provisions, the courts have uniformly held that bankruptcy of the pledgor does not deprive the pledgee of any rights secured to him by the pledge agreement or by the law of the state where the pledge was made. *Hiscock* v. *Varick Bank of New York*, 206 U. S. 28, 40 (1907); *Yeatman* v. *Savings Institution*, 95 U. S. 764 (1877); *Jerome* v. *McCarter*, 94 U. S. 734, 739 (1876), *supra; Taney* v. *Penn Bank*, 232 U. S. 174 (1914); *In re Hudson River Navigation Corporation*, 57 F. (2d) 175, 176 (C. C. A. 2d, 1932), *supra; In re Peacock*, 178 Fed. 851, 858 (E. D. No. Car., 1910); *In re Browne*, 104 Fed. 762 (E. D. Pa., 1900), *supra;* see also *In re Chaiken*, 10 Am. Bank. Rev. 14 (M. D. Pa., 1933), *supra*, construing Section 74 of the Bankruptcy Act. Cf. *York Manufacturing Co.* v. *Cassell*, 201 U. S. 344, 352 (1906).

Thus, in *Hiscock* v. *Varick Bank of New York, supra*, this Court said (p. 41):

"When the petition in the present case was filed the bank had a valid lien upon these policies for the payment of its debt. The contracts under which they were pledged were valid and enforceable under the laws of New York where the debt was incurred and the lien created. *The bankruptcy act did not attempt by any of its provisions to deprive a lienor of any remedy which the law of the State vested him with;* * * *."

In the *Hiscock* case the Court not only held that bankruptcy of the pledgor in no way affects the pledgee's lien, but that it does not affect his "remedy."[6]

The validity of petitioners' liens being conceded (Br. in Opp., p. 7; R. 324), it follows that the District Court was without authority to issue the injunction—unless that court

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[6] Cases like *Isaacs* v. *Hobbs Tie & Timber Co.*, 282 U. S. 734 (1931), and *Allebach* v. *Thomas*, 16 F. (2d) 853 (C. C. A. 4th, 1927)—the latter of which was relied upon by respondents in the courts below—are not contrary to this conclusion, since they involve the restraint of enforcement of a lien (a) *by judicial proceedings*, (b) upon mortgaged real estate, *i. e., property in possession of the bankruptcy court, and property not falling within the provisions of Section 57 (h) of the Act.* Where a bankruptcy, or any other, court takes possession of property, such property is withdrawn from the jurisdiction of all other courts. The lien of the mortgagee is not lost since presumably the mortgaged property can and will be sold quite as satisfactorily by one court as by another (see pp. 73-74, *infra*). Moreover, when the bankruptcy court does not have possession of the mortgaged premises, *i. e.*, when the creditor has instituted proceedings to foreclose the lien more than four months prior to bankruptcy of the mortgagor, the bankruptcy court is without power to enjoin the foreclosure proceedings. *Straton* v. *New*, 283 U. S. 318 (1931). Cf. *Rogers Brown & Co.* v. *Tindel Morris Co.*, 271 Fed. 475, 476 (E. D. Pa., 1921), *supra*.

If the statement in *Allebach* v. *Thomas*, *supra*, at page 855, that a bankruptcy court may interfere with the lienor's "'remedy" (so long as it affords him "an equally adequate remedy") is held applicable to pledged *securities*, it is in conflict with the *Hiscock* case. And see *In re Hudson River Navigation Corporation*, 57 F. (2d) 175, 176 (C. C. A. 2d, 1932), *supra*.

possessed a greater power in the premises in a proceeding under Section 77 than it possesses in the ordinary bankruptcy proceeding, a point later discussed (pp. 34-48, *infra*).

2. A bankruptcy court cannot in any form of proceeding adjudicate controversies with respect to property not in its possession (except in specified cases not here pertinent). Collateral validly held by a pledgee is not actually or constructively in possession of the bankruptcy court.

A court of bankruptcy is one of sharply limited jurisdiction. By Section 2 of the Bankruptcy Act (p. 91, *infra*), "courts of bankruptcy" are merely invested "with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction *in bankruptcy proceedings*," whereas by Section 23 (U. S. C. A., Title 11, Sec. 46) the *district courts* are given jurisdiction of all controversies, as distinguished from proceedings, in bankruptcy, to the same extent as though the action had been brought by the bankrupt himself.

Although the trustee, upon adjudication of bankruptcy, acquires title to all property of the bankrupt, wherever located, the only property which passes into the control and jurisdiction of the bankruptcy court is that in the actual or constructive possession of the bankrupt when the petition is filed. See *Schumacher* v. *Beeler*, No. 215, Present Term, page 3, footnote 2; *Straton* v. *New*, 283 U. S. 318, 321 (1931); *Acme Harvester Co.* v. *Beekman Lumber Co.*, 222 U. S. 300, 308 (1911); *Mueller* v. *Nugent*, 184 U. S. 1, 14 (1902); *In re Lake County Fuel & Supply Co.*, 70 F. (2d) 391, 392 (C. C. A. 7th, 1934), cert. den., No. 179, Present Term; *Lynch* v. *Roberson*, 287 Fed. 433 (C. C. A. 6th, 1923); *In re Smith*, 3 F. (2d) 40 (S. D. Tex., 1924), aff'd

sub. nom. Paynter v. *Slator,* 8 F. (2d) 1021 (C. C. A. 5th, 1925).

Thus, in *Isaacs* v. *Hobbs Tie & Timber Co.,* 282 U. S. 734 (1931), the Court said (p. 737):

> "The title and right to possession of all property owned *and possessed* by the bankrupt vests in the trustee as of the date of the filing of the petition in bankruptcy, * * *."

More recently, and *in a case involving Section 77,* the Court said in *Ex parte Baldwin,* 291 U. S. 610, 615 (1934):

> "All property *in the possession of a bankrupt* of which he claims the ownership passes, upon the filing of a petition in bankruptcy, *into the custody of the court of bankruptcy.*"

The cases above cited establish that the bankruptcy court's lack of jurisdiction over property not in its possession exists irrespective of whether the proceeding *is summary or plenary.* It is only with respect to property in its custody that the court possesses *any jurisdiction,* either summary or plenary, to adjudicate controveries without consent,—except that it possesses *plenary jurisdiction* to adjudicate controversies with respect to property not in its possession in the specific cases covered by Section 60 (b), 67 (e) and 70 (e) of the Act.[7] *Taubel-Scott-Kitzmiller Co., Inc.,* v. *Fox,* 264 U. S. 426 (1924): cf. *Bardes* v. *Hawarden Bank,* 178 U. S. 524 (1900).

Thus, in *Taubel-Scott-Kitzmiller Co., Inc.,* v. *Fox, supra,* the Court said (p. 434):

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[7] These sections (see Appendix to R. F. C. brief, pp. 85-88) have no application to a valid pledge of collaterals delivered to the pledgee more than four months prior to bankruptcy of the pledgor.

> "• • • In the absence of possession, there was under the Bankruptcy Act of 1898, as originally passed, no jurisdiction, without consent, to adjudicate the controversy *even by a plenary suit.* The Act of February 5, 1903, • • • together with the Act of June 25, 1910, • • • conferred upon the bankruptcy court jurisdiction, under certain circumstances, *against the adverse claimant, in a plenary suit* under §60, subdivision b, §67, subdivision e, and §70, subdivision e."

The foregoing thus establishes a further reason why a bankruptcy court cannot enjoin the sale of collateral validly held by a pledgee of the bankrupt, *i. e.*, lack of possession of and dominion over the property the use of which is sought to be restrained. This lack of dominion, and consequent lack of jurisdiction—notwithstanding jurisdiction over the person of the pledgee—is clearly set forth in *In re Hudson River Navigation Corporation*, 57 F. (2d) 175 (C. C. A. 2d, 1932), *supra*, where the court said (pp. 175-176):

> "For practical purposes the pledgee has therefore immediate dominion as between the two, and with it goes the power to resist any action by the bankruptcy court, *which must be founded on the fact that the bankrupt had such dominion, when the petition was filed.* • • •
>
> "• • • *when the bankrupt has surrendered dominion*, the immunity extends not only to the right, but to the forum as well. The bankruptcy court had no jurisdiction to stay the proposed sale. • • •"

Similarly, it was said by the court below itself, in *In re Parmenter*, 70 F. (2d) 929, 935 (C. C. A. 7th, 1934), cert. den. No. 236, Present Term:

> "• • • it has always been held that a bankruptcy court *has no jurisdiction whatever* over pledged secu-

> rity which has been transferred in good faith by a debtor to his creditor more than four months prior to the filing of the bankruptcy petition."[8]

It being apparent, in the instant cases, that the Debtor had neither actual nor constructive possession of the *collateral held by petitioners*, the court below held, in effect, that the District Court had jurisdiction over the Debtor's "equity" in that collateral, *i. e.*, the Debtor's right to discharge the indebtedness and reacquire the collateral, or to receive any surplus of the proceeds of the collateral remaining after payment of the debt (R. 322-323).

As to the Debtor's *own bonds* (as distinguished from the Short Line bonds) held by petitioners, it may be doubted whether the Debtor possessed *any equity therein*, since such bonds are, as to the debtor, not property, but

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[8] In this connection, it should be noted that although the appointment of a receiver by a federal court confers upon that court jurisdiction to decide all questions "incident to the preservation, collection and distribution of the assets" of the debtor (*Riehle, Receiver* v. *Margolies*, 279 U. S. 218 (1929)), such court may not restrain a pledgee from enforcing his lien by sale of the pledged collateral. (See pp. 18-19, *supra*). Thus, in *Rogers Brown & Co.* v. *Tindel Morris Co.*, 271 Fed. 475 (E. D. Pa., 1921), *supra*, the court said (p. 476):

> "The argument that, because the mortgaged premises are in the hands of the court, the bonds cannot be sold, does not meet the point. The principle is wholly different. No court would permit its possession and control of property under its care to be disturbed; but, although the court has possession of the mortgaged premises, it has not of the bonds. *The control pivots on the possession.*"

In re White Truck & Transfer Co. (S. D. Cal.), decided Sept. 4, 1934, cited by respondents (Br. in Opp., p. 4), and involving Section 77 B, is not inconsistent with this result, since there the injunction was issued against a chattel mortgagee and a conditional sales vendor who *were not in possession of the property in question.*

merely obligations or evidences of debt. (See *Easton* v. *German-American Bank*, 127 U. S. 532, 539 (1888); *Guaranty Trust Co. of N. Y.* v. *Galveston City Railway Co.*, 87 Fed. 813, 815 (C. C. A. 5th, 1898).)

In any event, the Debtor's so-called "equity" is not the "property" with which a pledgee deals when he sells collaterals which he holds as pledgee, and the court below clearly erred when it held that the District Court had jurisdiction over property *in possession of petitioners* because the Debtor at the time it filed its petition under Section 77 had an "equity" in such collaterals.

It is settled that a bankruptcy court has jurisdiction over *mortgaged* property of the bankrupt, including that mortgaged more than four months prior to the filing of the petition in bankruptcy. *Isaacs* v. *Hobbs Tie & Timber Co.*, 282 U. S. 734 (1931). But decisions so holding are not based on the fact that the mortgagor retains an "equity" which passes to the bankruptcy court, but upon the ground that the mortgaged property itself was in the actual possession of the bankrupt at the time of the filing of the petition. See *In re Jersey Island Packing Co.*, 138 Fed. 625, 628 (C. C. A. 9th, 1905).

Since it is the pledged property which the pledgee seeks to sell, the bankruptcy court must acquire possession of *that property* before it may deal with the same. The fact that the bankrupt's trustee has the right to acquire possession of the pledged collateral upon payment of the indebtedness does not vest the court with any greater jurisdiction over such pledged collateral than is possessed by an equity court in a like situation, nor give the court possession thereof prior to the payment of the debt.

The most persuasive argument against the theory of the court below is the fact that, notwithstanding a bankruptcy court has jurisdiction over the bankrupt's property "wherever situated" (cases, pp. 40, 84-85, *infra*), such courts have almost uniformly refused to enjoin a pledgee from selling validly pledged collateral in his possession, notwithstanding that in all such cases the same so-called "equity" of the bankrupt existed. In none of such cases was it held that such equity was "property of the bankrupt" within the control of the bankruptcy court, or that the bankruptcy court acquired jurisdiction over the pledgee and the pledged collaterals simply by asserting jurisdiction over the pledgor's so-called "equity." Cf. *Guaranty Trust Co.* v. *Fortress*, 61 F. (2d) 329 (C. C. A. 7th, 1932).

3. The decisions holding that a bankruptcy court cannot enjoin the sale of validly pledged collateral are further supported by the rule that a bankruptcy court is without jurisdiction to adjudicate in a summary proceeding a controversy with respect to property held by an adverse claimant.

As shown above, the lack of power in a bankruptcy court to enjoin the sale of pledged collateral is a disability which goes not merely to the *form* of the proceeding but to the *forum* itself. The fact, however, that the injunction in the instant cases was entered *in a summary proceeding* affords an opportunity for demonstrating the error of the courts below by a long line of cases which do not deal specifically with the matter of restraints upon the sale of pledged collateral.

If, when a bankruptcy petition is filed, certain property is in the possession of a third party and such party asserts

a substantial, pre-existing claim of title or lien with respect thereto, any right of the bankruptcy court to assert jurisdiction over that property is dependent upon a reduction of it to the possession, actual or constructive, of the bankruptcy court. This cannot be done in a summary proceeding in the bankruptcy court, but requires a plenary proceeding outside the bankruptcy court (except in the specific cases falling under Sections 60 (b), 67 (e) and 70 (e)). The party thus in actual possession is an "adverse claimant," and he is *of right* entitled to have his rights in reference to that property litigated in a court in which he might have been sued by the bankrupt had bankruptcy not intervened. (See Section 23 of the Bankruptcy Act, as amended; U. S. C. A., Title 11, Sec. 46.)

That a bankruptcy court has no summary jurisdiction with respect to rights asserted by "adverse claimants" is firmly established. Thus, in *Harrison* v. *Chamberlin*, 271 U. S. 191 (1926), the Court said (p. 193):

> "It is well settled that a court of bankruptcy is without jurisdiction to adjudicate in a summary proceeding a controversy *in reference to property held adversely to the bankrupt estate*, without the consent of the adverse claimant; but resort must be had by the trustee to a plenary suit."

See also *Taubel-Scott-Kitzmiller Co., Inc.*, v. *Fox*, 264 U. S. 426, 432-433 (1924), *supra; Weidhorn* v. *Levy*, 253 U. S. 268, 272 (1920); *May* v. *Henderson*, 268 U. S. 111, 115 (1925); *Louisville & Nashville R. Co.* v. *Eubank*, 184 U. S. 27 (1902); *Gilbert's Collier on Bankruptcy* (3d ed., 1934), §697; V *Remington on Bankruptcy* (3d ed., 1923), §2350.

In order to be an "adverse claimant" it is not necessary to assert a claim of absolute title to the property. *Jaquith*

v. *Rowley*, 188 U. S. 620, 624 (1903). Lien holders and secured creditors, including pledgees, have frequently been held to be "adverse claimants." *First National Bank of Chicago* v. *Chicago Title & Trust Company*, 198 U. S. 280 (1905); *Morton G. Thalhimer, Inc.*, v. *Florance*, 58 F. (2d) 23 (C. C. A. 4th, 1932); *American Trust & Savings Bank* v. *Ruppe*, 237 Fed. 581, 584 (C. C. A. 8th, 1916); *Fitch* v. *Richardson*, 147 Fed. 197 (C. C. A. 1st, 1906); *In re Rathman*, 183 Fed. 913, 921 (C. C. A. 8th, 1910); *Ft. Dearborn Trust & Savings Bank* v. *Smalley*, 298 Fed. 45, 50 (C. C. A. 8th, 1924).

In *In re Bacon*, 210 Fed. 129 (C. C. A. 2d, 1913), the court, speaking with respect to a bank asserting a concededly valid lien upon certain stocks held as security for debts due it from the bankrupt, said (p. 131):

> "It is enough to know that the First National Bank claims that under the law of New York it has a lien on these stocks as a security for debts due from Bacon to it. The trustee's petition was framed upon the theory that the bank had valid claims secured by these stocks. The bank has been throughout *asserting an adverse claim* and that its right in the stocks has been established by the New York courts."

The court below held that petitioners did not occupy such an "adversary status" as to require a plenary suit, since the "trustees admit the legality of the security held by the creditors," and the controversy "was restricted to a restraining of the *immediate pursuit* of a *remedy*" (R. 324). In so holding, the court misconceived the rule of law above set forth.

In the first place, the court erred when it stated that the controversy was "restricted to a restraining of the

immediate pursuit of a remedy." This statement necessarily implies either (a) that in lieu of a remedy of which petitioners are deprived they are to be given another which *in substance is the equivalent of the former,* or (b) that petitioners' remedy is being withheld from them only for a brief period after which they may be allowed to exercise it. Neither of such implications is warranted.

The fact is, neither court below has stated *just what petitioners are to be given in lieu of their express contract right to sell the collateral when they choose to do so,* and it is doubtful if either court or the respondents had or have any clear idea (certainly petitioners do not) as to just what petitioners are ultimately to be allowed to do with the collateral. It is quite clear that whatever "remedy" petitioners are ultimately to get is not to be made available to them until the consummation of a plan of reorganization (see R. 104), but whether such "remedy" will be a sale of the collateral (by petitioners or by the court) or will be the right to accept new securities in lieu of the pledged securities, is a matter of speculation. Even if ultimately petitioners are allowed to sell the pledged collateral, the fact that several years may elapse before a plan is consummated (nearly two years have elapsed without a plan even being formulated; see pp. 70-71, *infra*), at which time the value of the collateral may largely have disappeared (see p. 12, *supra*), shows that petitioners are not being given a remedy which is substantially the equivalent of their contract rights—the very essence of which is the right to select the time of sale (see *In re Hudson River Navigation Corporation, supra*)—and refutes the statement that the controversy was restricted to restraining "the *immediate* pursuit of a remedy."

But the court erred apart from the erroneous factual basis on which it acted.

Being without jurisdiction in a summary proceeding to require petitioners, adverse claimants, to surrender possession of the collateral (cases, pp. 30-31, *supra*), the court was equally without jurisdiction to issue an injunction restraining them from dealing with that collateral as pledgees thereof.

In *In re Ward*, 104 Fed. 985 (D. Mass., 1900), a creditor sought to obtain an order enjoining a third party, alleged to hold funds of the bankrupt under a contract, from making any transfer of such funds and credits. In refusing to issue such order, the court said (p. 986):

> "• • • if there is no jurisdiction to take the property, I cannot find jurisdiction to forbid its use. To take property out of a man's possession, and *to restrain him from dealing with it as owner, appear to me but different acts of exercise of the same jurisdiction.*"

In the courts below respondents cited two District Court cases which seem to hold that a bankruptcy court may, even in a summary proceeding, enjoin the sale of pledged collateral. *In re Purkett, Douglas & Co.*, 50 F. (2d) 435 (S. D. Cal., 1931), and *In re Henry*, 50 F. (2d) 453 (E. D. Pa., 1931).

The decision in the *Henry* case is opposed to the overwhelming weight of authority and, we submit, is erroneous.[9]

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[9] In the *Henry* case the court purported to follow *Isaacs* v. *Hobbs Tie & Timber Co., supra*, but made no reference to *Straton* v. *New, supra*. The court stated that it saw no distinction between pledges of "stocks" and "pledges of land," and gave no weight to the fact that in one case possession and control of the security is in the creditor, while in the other it remains with the debtor (see footnote 6, p. 23, *supra*).

The *Purkett* case, if contrary to the general rule, may be explained on the ground that the petition for the injunction alleged that the pledge was invalid, and by issuing the injunction the court undertook merely to restrain the sale by the pledgee "until the adverse claims of the respective parties can be adjudicated in a plenary suit before the appropriate forum." No such situation exists in the instant cases. Cf. *In re McGinley*, 219 Fed. 159 (C. C. A. 6th, 1915).

It is therefore clear, we submit, that the injunction could not have been issued in an ordinary bankruptcy proceeding.

B. Section 77 does not confer upon a bankruptcy court in a proceeding under that section a wider jurisdiction in the matter of enjoining a non-judicial sale of collateral pledged by the debtor than is possessed by the court in an ordinary bankruptcy proceeding.

Since the District Court would have been without authority in an ordinary bankruptcy proceeding to issue an injunction against petitioners, it follows that, in issuing the injunction now in question, that court exceeded its powers, unless—contrary to our contentions—its jurisdiction in the premises in a proceeding under Section 77 is greater than that possessed by a court of bankruptcy generally.

Chapter VIII of the Bankruptcy Act, consisting, as originally enacted, of Sections 73 to 77, inclusive (Act of March 3, 1933, 47 Stat. 1467, U. S. C. A., Title 11, Secs. 201-205), was enacted as one act pursuant to a general policy of Congress. (S. Rept. No. 1215, 72d Cong., 2d Sess.; H.

Rept. No. 1897, 72d Cong., 2d Sess.) Section 73 provides that:

> "In addition to the jurisdiction exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, courts of bankruptcy shall exercise original jurisdiction in proceedings for the relief of debtors, as provided in sections 74, 75 and 77 of this Act."

Section 77 was thus enacted as an addition to the Bankruptcy Act as it existed on March 3, 1933, and its obvious, as well as express, purpose was to bring railroads "under the bankruptcy jurisdiction of the Federal court." (H. Rept. No. 1897, 72d Cong., 2d Sess., p. 16.)

The principal underlying factors inducing Congress to take this action were stated by the House Judiciary Committee as follows (*ibid*, p. 5):

> "The necessity for the enactment of this section grows out of the present expensive, protracted, confusing, and inefficient administration of affairs of railroad companies engaged in interstate commerce in equity receiverships. The necessity for its immediate enactment results from the fact that at the present time many of the railroad organizations of the country confront the necessity of reorganization. • • • They must either reorganize under some arrangement such as is provided for by this section, or be administered in equity receiverships. The protracted period of such administration, the duplication of expense incident to ancillary receiverships, the waste, the opportunity for manipulation on the part of special groups, are too well known to require comment."

While Section 77 contemplates the *reorganization* of the debtor railroad, as opposed to its *liquidation*, it is an inte-

gral part of the Bankruptcy Act. Moreover, it does not appear that there is anything in the underlying purposes of that section which requires or justifies a restraint upon the sale of collateral pledged by a debtor railroad seeking the benefits of that section.

1. Except as otherwise provided in Section 77, the jurisdiction of a court in a proceeding under that section is the same as that of the court in an ordinary voluntary bankruptcy proceeding.

Section 77(n) provides (p. 93, *infra*) that:

> "In proceedings under this section and consistent with the provisions thereof, *the jurisdiction and powers of the court*, the duties of the debtor and the rights and liabilities of creditors * * * *shall be the same* as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."

Thus, unless altered by Section 77, or inconsistent with the provisions thereof, the jurisdiction of the court is precisely the same as that of a bankruptcy court generally.

Section 77 contains no provision which expressly or by necessary implication gives the court a wider jurisdiction in the matter of enjoining a non-judicial sale of pledged collateral than is possessed by a bankruptcy court in an ordinary bankruptcy proceeding.

In the courts below the respondents emphasized the words "consistent with the provisions thereof" in Section 77 (n) as indicating a legislative intent that the court should have all the powers of the ordinary bankruptcy court and, in addition, any *other* powers necessary or expedient for effectuating the new purposes of Section 77. But,

plainly, the words in question are a *limitation* upon the powers conferred upon the court in a proceeding under Section 77, and not a grant of additional powers. Moreover, a restraint on the sale of pledged collateral such as that applied in the instant cases is *not* "consistent with the provisions" of Section 77.

2. The specific grant of authority, by Section 77 (l), to enjoin the commencement or continuance of any judicial proceeding to enforce any lien upon the debtor's estate, negatives a grant of power to enjoin the enforcement of a lien by other than judicial proceedings.

The only provision in Section 77 dealing with restraints on the enforcement of liens is Section 77 (l), which provides (p. 92, *infra*), that:

> "In addition to the provisions of Section 11 of this Act for the staying of pending suits against the debtor, such suits shall be further stayed until after final decree [and][10] the judge may, upon notice and for cause shown, enjoin or stay the commencement or continuance of *any judicial proceeding to enforce any lien upon the estate until after final decree.*"

In the courts below certain of the respondents pointed to this provision as indicating a legislative intent that the enforcement of all liens, by any and all methods, should be held up until the consummation of a reorganization.

We question whether Section 77 (l) would apply even to a judicial proceeding to realize upon pledged collateral in the possession of the pledgee since, as above pointed out,

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[10] The word "and" seems inadvertently to have been omitted.

the only "estate" of the bankrupt over which the bankruptcy court acquires jurisdiction is that in the actual or constructive possession of the bankrupt. Moreover, it would seem that a pledgee in possession of negotiable securities has a greater interest therein than a mere "lien." See *In re Hudson River Navigation Corporation*, 57 F. (2d) 175 (C. C. A. 2d, 1932), *supra*.

But, in any event, so far as Section 77 (l) has any application to the instant cases, it clearly negatives the existence of authority to issue the injunction.

Under familiar principles of statutory construction, the express grant of this new but limited jurisdiction with respect to enjoining the enforcement of any "lien" upon the debtor's "estate" clearly negatives an intent to confer a broader or additional power of the same general character. "* * * the affirmative description of the cases in which the jurisdiction may be exercised implies a negative on the exercise of such power in other cases." *In re Heath, Petitioner*, 144 U. S. 92, 93 (1892); *Sturges* v. *The Collector*, 12 Wall. 19, 27 (1870); *Durousseau* v. *United States*, 6 Cranch 307, 314 (1810).

The application of this rule to the instant cases is unusually clear. Prior to the enactment of Section 77 the courts had almost universally held that a bankruptcy court has no power (1) to enjoin a pledgee, rightfully in possession, from exercising his power of sale (see pp. 17-19, *supra*), or (2) to interfere with a judicial proceeding to enforce a lien instituted more than four months prior to the date of the filing of the bankruptcy petition. (See *Straton* v. *New*, 283 U. S. 318 (1931).) When, therefore, by Section 77 (l), Congress expressly conferred upon a bankruptcy court the right to enjoin the *continuance* of judicial proceedings commenced *before the filing of a peti-*

tion under Section 77 (a right which it *still* does not have in the ordinary bankruptcy proceeding), it plainly denied to the court the power to enjoin a pledgee in possession of validly pledged collateral from making a non-judicial sale thereof.

This contention is sustained by two decisions construing the closely similar provisions of Section 74 (n) of the Bankruptcy Act, enacted at the same time as Section 77 (l). *In the Matter of Charles P. Doelger, Debtor,* 9 Am. Bank. Rev. 329 (S. D. N. Y., 1933); *In re Chaiken, Debtor,* 10 Am. Bank. Rev. 14 (M. D. Pa., 1933). These decisions hold squarely that in a proceeding under Section 74 the court is without authority to enjoin the sale of pledged collateral, and are based largely upon the ground that Section 74 (n)—which is similar to Section 77 (l) (see p. 93, *infra*)—was intended to apply *only to judicial proceedings.* Thus, in the *Doelger* case, *supra,* Judge Bondy said:

> "* * * it seems clear that the court's power to enjoin is restricted to court proceeding; * * *."

3. Section 77 (a) does not confer a greater jurisdiction in the matter of enjoining the sale of pledged collateral than is possessed by the court in an ordinary bankruptcy proceeding.

In affirming the injunctional order, the court below relied chiefly upon Section 77 (a) which provides (p. 92, *infra*) in part that:

> "If the petition is so approved, the court * * * shall, * * * have *exclusive jurisdiction of the debtor and his property wherever located.*"

In ascribing to the words italicized a legislative intent to grant to the court some special and enlarged powers—

not possessed by a bankruptcy court generally—over property not in the actual or constructive possession of the debtor when the petition under Section 77 is filed, the court below plainly erred.

Repeatedly this Court has defined the jurisdiction of a bankruptcy court in language almost identical with that of Section 77 (a). *Mueller* v. *Nugent*, 184 U. S. 1, 14 (1902); *Acme Harvester Co.* v. *Beekman Lumber Co.*, 222 U. S. 300, 306-308 (1911); *Lazarus* v. *Prentice*, 234 U. S. 263, 266 (1914); *Isaacs* v. *Hobbs Tie & Timber Co.*, 282 U. S. 734, 737 (1931); *Straton* v. *New*, 283 U. S. 318, 320-321 (1931); *Ex Parte Baldwin*, 291 U. S. 610, 615 (1934). And see *Staunton* v. *Wooden*, 179 Fed. 61, 63 (C. C. A. 9th, 1910).

Thus, in *Gross* v. *Irving Trust Co.*, 289 U. S. 342 (1933), the Court said (p. 344):

> "• • • title to all the property of the bankrupt, *wherever situated*, vests in the trustee • • •. The bankruptcy court has *exclusive jurisdiction* • • •."

Similarly, in *Acme Harvester Co.* v. *Beekman Lumber Co.*, 222 U. S. 300 (1911), the Court said (p. 307):

> "The *exclusive jurisdiction* of the bankruptcy court is so far *in rem* that the estate is regarded as *in custodia legis* from the filing of the petition.

Closely similar statements appear in all the above cited cases.

It must be presumed that Congress, in enacting Section 77 as an integral part of the Bankruptcy Act, intended that the phrase "exclusive jurisdiction of the debtor and its property wherever located" should be given the same meaning as had repeatedly been given to substantially identical

phrases by this and many other courts when dealing with the jurisdiction of the court in ordinary bankruptcy proceedings. *"The Abbotsford,"* 98 U. S. 440, 444 (1878); *Thorn* v. *Browne,* 257 Fed. 519, 523 (C. C. A. 8th, 1919); *Baltimore & Philadelphia Steamboat Co.* v. *Norton,* 40 F. (2d) 530, 531 (E. D. Pa., 1930), aff'd 48 F. (2d) 57 (C. C. A. 3d, 1931), mod. and aff'd 284 U. S. 408 (1932).

But, apart from the foregoing, the phrase in question clearly does not give to the court in a proceeding under Section 77 power to enjoin the sale of pledged collateral.

As pointed out (pp. 21-29, *supra*), there are two reasons why a bankruptcy court in an ordinary proceeding is without power to enjoin the sale of pledged collateral: (1) because by the Bankruptcy Act itself (§§67 (d) and 57 (h)) the lien of the pledgee and his rights to enforce the same are preserved, and (2) because the only property over which the bankruptcy court obtains jurisdiction is that actually or constructively in the possession of the bankrupt when the petition was filed.

Thus, even if it be assumed for argument that the phrase in question was intended to confer some wider or different jurisdiction upon the court in a proceeding under Section 77 than it possesses in an ordinary bankruptcy proceeding, such phrase does not confer power to enjoin the sale by a pledgee of validly pledged collateral, since it manifests no legislative intent: (1) to amend Sections 67 (d) and 57 (h), under which the pledgee is entitled notwithstanding bankruptcy of the pledgor to assert all rights given him by the pledge agreement,[11] or (2) to give to the

[11] On the contrary, by Section 77(g) (6), Section 57(h) is expressly made applicable "to the *appraisal of securities under this section*" (see Appendix to R. F. C. brief, p. 102).

court in a proceeding under Section 77, control over property not in the actual or constructive possession of the debtor when the petition under that section is filed. Plainly, the words "wherever located" refer to the *location* of the property, in a geographical or territorial sense, and not to the *possession* of the property.

By long accepted construction, a bankruptcy court's "exclusive jurisdiction" over property of the bankrupt "wherever found" or "wherever situated" has been held to mean jurisdiction only over property in the possession of the bankrupt. No valid reason—grammatical or otherwise—appears why the words "wherever located," as used in Section 77 (a), should be given a different meaning.

It is significant that Section 77 (n), guaranteeing to creditors that, so far as consistent with the other provisions of that section, their rights shall be the same as in an ordinary bankruptcy proceeding, was added after the bill (containing the phrase "jurisdiction of the debtor and its property wherever located") had passed the House. (76 Cong. Rec., pp. 2905-2907, 2931, 5104-5106.)

Support for petitioners' contention is found in cases construing Section 74 (m)—enacted with Section 77 as part of one act—which provides (p. 93, *infra*), that:

> "The filing of a debtor's petition or answer seeking relief under this section shall subject the debtor *and his property, wherever located, to the exclusive jurisdiction of the court* . . ."

This language, substantially identical with that of Section 77 (a), has been construed by the courts—including the court below—as vesting the court with jurisdiction only over property in the actual or constructive possession of the debtor at the time of the filing of a petition under Section 74. *In re Hillmert*, 71 F. (2d) 411 (C. C. A. 7th, 1934),

cert. den., No. 223, Present Term; *In re Chaiken*, 10 Am. Bank. Rev. 14, 16 (M. D. Pa., 1933); *In re Doelger*, 6 F. Supp. 776 (S. D. N. Y., 1934). See also *In re Parmenter*, 70 F. (2d) 929, 935-936 (C. C. A. 7th, 1934), cert. den., No. 236, Present Term.

4. Section 2 (15) of the Bankruptcy Act does not vest the court in a proceeding under Section 77 with jurisdiction to restrain a pledgee from selling validly pledged collateral.

Respondents concede there is no express authority in Section 77 for the issuance of the injunction, but contend (Br. in Opp., pp. 10-11) that the injunction was "necessay" in order to consummate a plan of reorganization and that therefore the court possessed power to enter the injunction under Section 2 (15) which provides (p. 91, *infra*) that:

> "courts of bankruptcy • • • are invested, • • • with such jurisdiction • • • as will enable them • • • to • • • (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this Act; • • •"

We deny that the injunction was necessary in order to permit the consummation of a plan of reorganization (Point II, pp. 49-60, *infra*), but, even if it were, respondents' contention is not well founded.

Although, by Section 77 (n), Section 2 (15) is made applicable to proceedings under Section 77, so far as consistent with the provisions thereof, Section 2 (15) does not give to a court proceeding under Section 77 a greater *jurisdiction* in the matter of restraining the sale of pledged collateral than it would have apart from Section 2 (15).

Section 2 (15) has been uniformly construed as a grant of "incidental powers." (See *Bardes* v. *Hawarden Bank*, 178 U. S. 524, 535 (1900).) Its effect is stated by *Collier on Bankruptcy* (13th ed., 1923), page 107, as follows:

> "Subdivision 15 • • • is the omnibus clause of the section. Generally speaking, it may be availed of to compel anything which ought to be done for, or to prevent anything which ought not to be done against, the enforcement of the law; *provided the court of bankruptcy otherwise has jurisdiction of the person or the subject-matter.*"

Similar statements appear in *Seaboard Small Loan Corporation* v. *Ottinger*, 50 F. (2d) 856, 857 (C. C. A. 4th, 1931); *In re Hammond*, 98 Fed. 845, 853 (D. Mass., 1899); *In re Donnelly*, 188 Fed. 1001, 1003 (N. D. Ohio, 1910); *In re Hicks*, 133 Fed. 739, 746 (N. D. N. Y., 1905); *In re Swofford Bros. Dry Goods Co.*, 180 Fed. 549, 553 (W. D. Mo., 1910).

In *Ginsberg & Sons, Inc.* v. *Popkin*, 285 U. S. 204 (1932), the Court, speaking of Section 2 (15), said (p. 208), that:

> "General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment."

The rights of a pledgee, after bankruptcy of the pledgor, are specifically dealt with in Sections 67 (d) and 57 (h).

In *In re Browne*, 104 Fed. 762 (E. D. Pa., 1900), wherein the court refused to enjoin the sale by a pledgee of wool pledged to secure notes of the bankrupt, the court said (p. 763) with, respect to Section 2 (15) and another provision, that such clauses:

> "• • • must, of course, be read in connection with the rest of the statute, and are necessarily qualified

> by such provisions as are to be found in clause 'd' of section 67, concerning liens, and by clause 'h' of section 57, concerning the method of ascertaining the value of securities held by creditors."

See also *In re Ward*, 104 Fed. 985, 987 (D. Mass., 1900).

In the court below respondents relied chiefly upon *John Matthews, Inc.* v. *Knickerbocker Trust Co.*, 192 Fed. 557 (C. C. A. 2nd, 1911), *In re Purkett, Douglas & Co.*, 50 F. (2d) 435 (S. D. Cal., 1931), and *In re Collier*, 4 F. Supp. 700 (S. D. N. Y. 1933), to sustain their construction of Section 2 (15). A reference to the first two of those cases, which are elsewhere herein discussed (pp. 18, 33-34, *supra*), will show that in neither case did the court base its action upon Section 2 (15). The third case illustrates clearly our contention that Section 2 (15) is operative only when the court otherwise has jurisdiction of the subject matter.

That Section 2 (15) does not confer upon the District Court power to enter the injunction would seem necessarily to follow from the fact that that section has never in the past been construed to authorize a bankruptcy court to restrain the sale of pledged collateral.

Respondents, however, argue that the primary purpose of the ordinary bankruptcy proceeding is *liquidation* of the estate, whereas the primary purpose of a proceeding under Section 77 is *reorganization* of the estate. And they argue that a restraint upon the sale of pledged collateral is not "necessary" where the court is engaged in *liquidating* an estate, but is "necessary" (when the collateral consists of bonds of the debtor) where the court is engaged in *reorganizing* the estate.

This contention is unfounded because (a), as shown above, Section 2 (15) is not a source of jurisdiction; it is operative only if "the court of bankruptcy otherwise has

jurisdiction of the person or the subject matter," (b) the record does not establish that the injunction was necessary for the accomplishment of a plan of reorganization (Point II, pp. 49-60, *in a*), and (c) there is no such distinction between a bankruptcy *reorganization* proceeding (under Section 77 or Section 77-B) and the ordinary bankruptcy *liquidation* proceeding as requires, especially by implication, a power in the former which the courts have held not to be necessary, or even desirable, in the latter.

That a restraint upon the sale of pledged collateral is not "necessary" in a bankruptcy liquidation proceeding is proved by the fact that many such proceedings have been successfully consummated without such restraint, even though creditors might have received larger dividends if an injunction had been granted. Upon what theory, then, is such restraint to be deemed necessary to a successful *reorganization* of a debtor? Many successful reorganizations have been consummated *in equity* in the past without such restraint, and presumably at least some of the corporations so reorganized had pledged their own obligations as security for loans (cases, pp. 19-20, *supra*).

5. The legislative history of Section 77 negatives any intent to clothe the court with the jurisdiction asserted by the District Court.

While there is no ambiguity in Section 77 as to the point at issue, we point out that the legislative history of that section sustains petitioners' contentions.

When Congress enacted Section 77, it was well aware of the distinction between property in the possession of the bankruptcy court and that in the possession of secured creditors, for in Section 74 (h) (which, unlike Section 77,

contains a provision for extending the time of payment of debts, both unsecured and secured), it provided (see Appendix to R.F.C. brief, pp. 88-89) for extending the time of payment of secured debts—

> "the security for which is in the actual or constructive possession of the debtor * * *."

The phrase quoted was not in the bill as originally passed by the House, but was subsequently added, the change being explained by the Senate Judiciary Committee (S. Rept. No. 1215, 72d Cong., 2d Sess., p. 5) as follows:

> "* * * It was believed that if every form of collateral that was deposited as a security for a loan should be subjected to review by the court in any proceedings under this act that it could but result in a greater value of collateral being required by the person or institution granting the loan in the first instance. The tendency would be to further restrict credit."

See also *In the matter of Charles P. Doelger,* 9 Am. Bank. Rev. 329 (S. D. N. Y., 1933).

That Congress did not intend to interfere with the right of a creditor to realize upon pledged security in his possession is borne out by a discussion on the floor of the House with respect to the effect of the bill which became Section 77 upon the rights of the R.F.C., which had loaned some $300,000,000 of public money to the railroads. Certain members of Congress were desirous of making certain that the security held by the R.F.C. should not be impaired by the proposed act. (76 Cong. Rec., pp. 5127-5128, 5359.) In this connection, the following statement was made by Mr. Summers, who was sponsoring the bill in the House (76 Cong. Rec., p. 2909):

"Mr. Garber: What will be the preferential status given loans made by the government to the railroads, over investments in stock and bonds?

"Mr. Sumners: They are not given by this bill any preferred status which they do not now have and to whatever degree now preferred the status is not lessened. They are not disturbed."[12]

The effect of the decision of the court below is to give to a bankruptcy court in a proceeding under Section 77 a jurisdiction (in the matter of enjoining the sale of pledged collateral) wholly at variance with that possessed by such court in the ordinary bankruptcy proceeding, and, so far as the business world is concerned, the decision overturns a rule of law which has stood unquestioned for many years. Moreover, as later brought out in detail, the effect of the decision is summarily to deprive petitioners of substantial property and contract rights. In the light of these facts this Court must assume, we submit, that if Congress had intended that the court should have power to enjoin the sale by pledgees of collateral in their possession, it would have indicated such intent by apt words.

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[12] It is significant that in a document called "Criticisms and Suggestions Relating to H. R. 14359, and S. 5551, Amending the Bankruptcy Act" (Senate Judiciary Committee Print, 72nd Cong., 2d Sess., p. 95), is printed at least one proposed plan for railroad reorganizations which expressly includes the right to enjoin pledgees from realizing upon the pledged collateral.

II.

The record affords no basis for the conclusion of the District Court that the injunction was necessary for the enforcement of Section 77.

If, as we contend, the District Court was without authority to issue the injunction, a consideration of the effect of a sale of the collateral upon the preparation and consummation of a plan of reorganization would seem to be quite irrelevant. If Section 77 does not expressly or by necessary implication authorize the injunction, such authority cannot be predicated upon considerations of expediency or necessity. *A fortiori,* such authority cannot be predicated upon such considerations when Section 77, fairly interpreted, *inhibits* the issuance of such an injunction. Cf. *Crooks* v. *Harrelson,* 282 U. S. 55, 60 (1930); *Chung Fook* v. *White,* 264 U. S. 443, 445 (1924).

But, since respondents sustain the injunction upon the theory that, under Section 2 (15), the court had power to enter *any* order which "was necessary to prevent the proceeding from becoming abortive" (Br. in Opp., p. 10), we emphasize the fact that there is no basis for the contention that the injunction was "necessary" for the consummation of a plan of reorganization.

Although the District Court made no findings, the injunctional order contains certain recitals, and the *conclusions* of the court that a sale of the collateral would "in effect prevent the *orderly* preparation and consummation of a plan of reorganization," and that an injunction against the sale of the collateral pending the "preparation and consummation" of a plan was "necessary for the enforcement of the provisions of Section 77" (R. 103-104).

We do not know what the court meant by the phrase "*orderly* preparation and consummation of a plan of reorganization," nor is it apparent that an order which is necessary for the "*orderly* preparation, etc.," is one which was "necessary for the enforcement * * * of Section 77." We shall, however, treat the conclusion of the court as a holding that the injunction was necessary in order to permit the consummation of a plan.

We contend, for reasons hereinafter set forth, that the statements above quoted from the injunctional order are *not findings of fact but conclusions of law;* and further, that even if they are findings of fact, there was *no evidence* before the court upon which it could make such findings.

No evidence whatever was presented to the District Court as to the effect of the sale of all or part of the pledged collateral upon a plan of reorganization, or otherwise. The record on which the injunction was entered consists of (1) the Debtor's petition (R. 37-43), (2) the affidavit of Dwight S. Beebe (R. 65-68), (3) the answer of the General Mortgage Protective Committee (R. 59-63), (4) and the affidavits filed by the non-resident banks (R. 69, 73, 100). Only the first two of these have any bearing on the point under consideration.

The only grounds for an injunction asserted in the Debtor's petition are (R. 40-41; and see R. 315-316) that—

> (1) The value of the collateral securing each of the Debtor's collateral loans is substantially in excess of the amount of the loan.
>
> (2) If the holders of the Debtor's notes should sell the same, it would cause a "substantial and irreparable loss to the trust estate."

(3) A "forced sale" of said collateral "at the present time * * * *might* result in a substantial deficiency judgment against the Debtor," and "would dilute the respective interests in the trust estate" of the other holders of bonds similar to those held by petitioners, of other creditors, and of the Debtor itself.

Giving these allegations—only the first of which is an allegation of *fact*—their widest scope, all they establish is the possibility that a forced sale of the collateral (1) might result in a substantial deficiency judgment, and (2) would "dilute" the interest of other bondholders and creditors. *But there was no evidence before the court, and the court was not in a position to assume, that a substantial deficiency judgment against the Debtor and a "dilution" of the interests of the other bondholders and creditors would hinder or prevent the preparation and consummation of a plan of reorganization.* Accordingly, the Debtor's petition affords no basis whatever for the holding of the District Court (R. 104) that an injunction was "necessary for the enforcement of the provisions of Section 77."

The only pertinent allegations in the Beebe affidavit are:

(1) There are pledged with Trustees under three of the Debtor's mortgages $102,860,000 face amount of bonds and $32,889,050 face amount of capital stock of the "Debtor's System" (R. 66).

(2) "* * * In certain events described in the Indentures under which the aforesaid Trustees are acting, such Trustees are given the right to sell such collateral" (R. 66-67). [What such "certain events" are does not appear, and the "Indentures" were not presented to the court.]

(3) A decision that the pledgees should not be enjoined from selling the collateral held by them would also determine that the "Trustees of the three Bond issues mentioned above had the right to sell * * * the $145,749,050 total face amount of capital obligations of the System pledged with them" (R. 67).

(4) "The *position* of this Committee * * * is that the interests of the bondholders * * * and of the Debtor's estate generally would best be served * * * by a decision requiring all holders of secured claims to retain their collateral until a plan of reorganization is prepared, approved and put into effect" (R. 67).

(5) "The *contentions* of the Committee are * * * that it is essential to enjoin such sales * * *" (R. 68).

Patently, we submit, none of these statements (only the first two of which are allegations of *fact*) affords any basis for a holding that a sale of the collateral would prevent the consummation of a plan of reorganization, or that an injunction was necessary for the enforcement of Section 77. Cf. *Missouri Pacific R. Co.* v. *Norwood,* 283 U. S. 249, 254 (1931).

Nor is there anything in the opinion of the Circuit Court of Appeals which establishes the alleged necessity. The *only statements in the opinion on this point* are (R. 324-325):

> "In the instant case some fifty-four millions of dollars of the debtor's and its subsidiaries' bonds were hypothecated with creditors whose claims were scarcely one-third that amount. To successfully reorganize, it is necessary to take care of the funded indebtedness amounting to approximately two hundred and eighty millions of dollars. If, in addition thereto, fifty-four million dollars of bonds were beyond the control of the court, it would be quite impossible to proceed with any reorganization.
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> * * * * * * *

"* * * Without some control over the disposition of $54,000,000 of bonds which have been hypothecated to secure nearly $18,000,000 of indebtedness, the presentation of a satisfactory plan of reorganization might as well be abandoned."

What is meant by the statement that without an injunction the pledged bonds would be "beyond the control of the court" is not apparent. In any event, there is not a scintilla of evidence to support the statement that "Without some control over the disposition of $54,000,000 of bonds * * * the presentation of a satisfactory plan of reorganization might as well be abandoned." In fact, there was no evidence at all (1) as to what kind of plan would be "satisfactory," (2) as to facts and conditions which must exist before a "satisfactory plan," or any plan, may be prepared or consummated, (3) as to what would be the effect of the asserted lack of "control" over the pledged bonds, or (4) that a plan could be consummated if an injunction were issued, but could not without an injunction.

Moreover, the fallacy of the court's statement is apparent, apart from the lack of supporting evidence.

Other than the pledged bonds, the Debtor has outstanding—in the hands of the public—bonds in excess of $280,000,000 (R. 318). No injunction has been issued against the "disposition" of these bonds; they are sold daily upon the stock exchanges, and the District Court has no control over their "disposition". Upon what basis is control over the disposition of $54,000,000 of pledged bonds absolutely vital before a plan can be even "presented," when the court is equally without "control" over the disposition of $280,000,000 of like bonds held by the public?

Respondents are thus committed to the contention that, in a proceeding under Section 77, the court must always and necessarily find—and without any evidence being presented—that an injunction is "necessary" for the consummation of a plan of reorganization *where the debtor has pledged a substantial amount of its own bonds in a face amount in excess of the debts which they secure.* If the fallacy of such contention is not apparent on its face, it is easily demonstrable.

Just what effects do respondents assert a sale of the pledged collateral will have upon a reorganization?

In the District Court respondents argued (see also Br. in Opp., pp. 10-11, 14) that such sale would (1) *dilute* the interests of the other holders of outstanding bonds of the Debtor and (2) increase the outstanding indebtedness of the Debtor. They argued thus: The Chase National Bank holds the Debtor's note for $2,000,000, secured by $7,209,000 face amount of bonds ($3,253,000 of the Debtor's First and Refunding bonds and $3,956,000 of Short Line Bonds); if the Bank should sell the collateral for, say, $1,000,000, it would still have a claim against Debtor for $1,000,000, and the purchasers of the bonds would have a claim against the "Debtor's System" for $7,209,000; a claim against the Debtor of $2,000,000 is thus transformed into one of $8,209,000. (See Br. in Opp., p. 6.)

In the Circuit Court of Appeals, some of the respondent Committees (referred to herein as the First and Refunding Group) adhered to this argument, but other Committees (referred to herein as the General Mortgage Group) advanced a wholly new and conflicting theory. This second group contended that as a matter of law the pledgees *could not sell the pledged bonds!* They argued that, under the

Bankruptcy Act, the rights of creditors are fixed as of the commencement of the proceeding; that a creditor holding mortgage bonds of the bankrupt may not prove a claim upon the pledged bonds, but may only prove a claim upon the debts secured; that the only purpose of the pledged bonds is to represent the pledgee's fractional interest (held as security only) in the lien of the mortgage; and that under Section 77, as an integral part of the Bankruptcy Act, the pledgee banks could not—after the filing of the Debtor's petition—transfer to another anything more than the pledgees themselves had when the proceeding was commenced.

This latter argument, if sound, establishes that there would be (a) no "dilution" of the rights of other bondholders, and (b) no increase in the Debtor's indebtedness, upon the sale of the pledged collateral, and thus nullifies completely the theory upon which the injunction was sought (R. 40) and issued (R. 103). So, in order to sustain the injunction, the General Mortgage Group argued that the court possessed, and rightfully exercised, *the power to bar creditors from splitting up their claims, or from splitting up and transferring interests, held as collateral, in the Debtor's estate!*

Which of these two diametrically opposed views is correct[13] need not be here determined since, on either view,

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[13] See foot-note 5, page 20, *supra;* foot-note 15, page 57, *infra;* but see also Hatch, "A Form of Depression Finance—Corporations Pledging Their Own Bonds," 47 Harv. L. Rev. 1093. As to the contention of the General Mortgage Group that only claims against the debtor which are due and owing on the date the petition under Section 77 is filed may participate in the reorganization, see Section 77 (b), which defines the word "creditors" as including "all holders of claims, interests, or securities of whatever character against the debtor or its property * * * *whether or not such claims, interests, or securities would otherwise constitute provable claims under this Act.*" (See Appendix to R. F. C. brief, pp. 93-94.)

there is no basis upon this record for a holding that the injunction was necessary in order to permit of a plan of reorganization. Assuming, for argument, the correctness of the basic premises of the First and Refunding Group,[14] they utterly fail to show that a sale of the collateral would render the consummation of a plan of reorganization impossible, or even improbable.

Of what relevancy are the assumed facts that upon a sale of the pledged collateral (1) the interests of other bondholders and creditors would be "diluted," (2) the outstanding indebtedness of the Debtor would be increased, and (3) the amount of new securities which must be provided for in any plan will be increased and the nature thereof affected (see Br. in Opp., p. 8), in the lack of proof of any kind that these facts *would so affect the capital structure of the Debtor, or otherwise produce such a situation, as to prevent a reorganization?* Surely the court was not entitled to *assume* that such facts would produce such

[14] There is, of course, no *real* difference between a sale of pledged collateral consisting of bonds of a third party and a sale of pledged collateral consisting of bonds of the bankrupt. A sale of the former may result in wiping out a substantial equity of the bankrupt, with the result that the interests of all other creditors are "diluted," *i. e.*, they will receive less than they would if a sale of the collateral had been restrained until the collateral could be sold at a higher price, or until the bankrupt's trustee might be able to redeem the same. *And this is all that happens where the pledgee sells pledged bonds of the bankrupt*, except that in the latter case the "dilution" might be greater than in the former.

In the instant cases, the asserted "dilution" and "increase of indebtedness" is more fanciful than real, at least in the entire absence of proof (a) that the value of the pledged collateral is in excess of the claims secured thereby (which is clearly not so at the present time; see p. 12, *supra*), and (b) that a wholly unsecured claim against the Debtor possesses substantial value.

The validity of the pledges is conceded, and therefore, even if the injunction stands, the pledged collateral will have to be provided for in any plan of reorganization to the same extent (to the amount of the Debtor's notes held by petitioners) as other bonds

a result, especially at a time when no one had any idea as to what kind of plan, if any, would be feasible.

It is therefore submitted that, admitting (for argument) every premise of the First and Refunding Group, the District Court had not even a scintilla of evidence before it which would justify its holding that, unless the injunction were entered, it would be impossible to consummate *any plan* of reorganization.

Similarly, as to the theory of the General Mortgage Group. We dispute the contention that, upon the filing of Debtor's petition under Section 77, petitioners became and are now unable, as a matter of law, to sell the pledged collateral as such,[15] a contention plainly without merit as to

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of the same kind held by the public generally. It was conceded in the court below by all the respondents that petitioners, as pledgees, would be entitled in any plan of reorganization, to realize—to the full amount of the Debtor's notes held by them—upon the pledged bonds, *i. e.*, upon the mortgaged assets underlying the bonds. (See Br. in Opp., pp. 7-8.) This much was conceded even by the court in the *Mississippi Valley Trust Company* case. (See 258 Fed. 346, at p. 354.)

In other words, even if a sale of the pledged collateral would increase the total general claims against the Debtor, in the entire absence of proof of the facts (a) and (b) above, a purchaser of the pledged bonds would acquire no greater interest in the Debtor's assets—*i. e.*, those securing the pledged mortgage bonds—than must eventually be accorded to petitioners as pledgees thereof, *assuming no sale of the pledged collateral.*

It may also be pointed out that the "dilution" argument has no application whatever to the Short Line bonds, which constitute about 60% of petitioners' collateral (R. 30). Such bonds are secured obligations of *a third party*. Even though the Debtor may have guaranteed the payment of such bonds (see R. 20), there would be no "dilution" of the rights of other creditors upon a sale of the pledged collateral, since the Debtor can require the Short Line Company to reimburse it for any payments it might be compelled to make upon its guaranty.

[15] We do not consider this question relevant, and it would require a complete additional brief to answer the various contentions in this respect made in the court below by the General Mortgage Group.

the Short Line bonds (*i. e.*, bonds of a third party) held by petitioners. But assuming, for argument, that petitioners cannot sell the pledged bonds as such, but have only a right to assign their claims (with the security) against the Debtor, and assuming further that if there were no injunction, petitioners might assign *part* of their claims, or assign all thereof, *to several persons*, with the result that said claims are split up, these facts do not—in and of themselves, and *with no evidence as to the probable, if any, effect thereof upon the working out of a plan of reorganization*—warrant a holding that no plan could be consummated unless an injunction were entered.[16]

It must be remembered that respondents' contentions are predicated on the theory that the injunction was "neces-

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Many of the pertinent authorities are cited in foot-note 5, page 20, *supra*.

It may be pointed out that this Court has held that bankruptcy does not invalidate a pledgee's right to sell mortgage bonds of the bankrupt pledged by it. *Jerome v. McCarter*, 94 U. S. 734, 739 (1876). That decision was followed in *In re Ironclad Mfg. Co.*, 192 Fed. 318 (C. C. A. 2d, 1912), in which the court denied an injunction restraining a sale of a bankrupt corporation's pledged bonds. In *In re Battle Island Paper Co.*, 259 Fed. 921 (N. D. N. Y., 1919), a pledgee of such bonds was permitted to sell them to itself, credit its *pro rata* share of the proceeds of the foreclosure of the mortgage securing the bonds upon its claim, and prove a deficiency claim *based upon the face amount of the bonds*. In *Turner* v. *Metropolitan Trust Co.*, 207 Fed. 495 (C. C. A. 9th, 1913), it was held that, in so far as a pledgee's right to dispose of pledged collateral is concerned, a pledge by the *bankrupt* of its own secured obligations is to be treated exactly as is a pledge of the obligations of a third party. A like rule prevails in equity with respect to a pledge by an *insolvent* corporation of its own secured obligations. *Rogers Brown & Co.* v. *Tindel Morris Co.*, 271 Fed. 475 (E. D. Pa., 1921).

[16] The contention that a plan of reorganization could not be worked out if "classes of creditors are being changed all the time" (as asserted by the General Mortgage Group in the court below) is,

sary" to enable the consummation of a plan (Br. in Opp., pp. 10-11, 14). Accordingly, while it may not have been necessary for respondents to show that if the injunction were issued a plan *could be consummated*, it was clearly incumbent upon them to make a *prima facie* showing that, unless an injunction were entered, *a plan could not be worked out*. It would not be enough to show merely that any plan of reorganization which might be devised if there were no injunction might, or would necessarily, be *a different plan* from that which might be devised if the injunction were granted.

Moreover, while Section 77 contemplates a plan of reorganization for the Debtor, it clearly does not and could not guarantee any particular kind of plan or that any particular plan will be practicable. (See H. Rept. No. 1897,

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with all deference to the learned counsel, wholly without substance. If the Debtor has issued and outstanding 1,000 of its X bonds, the holders of such bonds constitute one class of claimants. (See Order No. 37 of the District Court, Appendix to R. F. C. brief, pp. 133-142.) If A, owning two of such bonds, assigns one each to B and C, the "class" of creditors is not changed; B and C are merely substituted within the class for A. That bankruptcy does not prevent a creditor from *assigning* his claim is elemental. (See General Orders in Bankruptcy, Rule XXI.)

If a splitting of claims would prevent a reorganization (and there is no evidence to this effect), it would be necessary to enjoin all holders of the Debtor's securities (totaling over $280,000,000, in face amount) from selling them. Large blocks of the Debtor's securities are sold daily upon the stock exchanges, but it has never been suggested that this fact would make a reorganization impossible. As a matter of fact, the court could not prevent the splitting of claims, since claims are constantly being divided by operation of law, *e. g.*, by death and distribution.

If the courts below had predicated the injunction upon the necessity of preventing a "splitting up of claims" against the Debtor, or of preventing a "change" in the "classes of creditors," petitioners would only have been enjoined from selling the pledged collateral *in parcels* or *to more than one purchaser*. Such a restraining order would have accomplished all that the General Mortgage Group assert was sought to be effected by the injunction in the instant cases.

72nd Cong., 2d Sess., p. 5.) Nor does it provide for a plan which will be acceptable or preferable to any class of creditors as opposed to another class; or that creditors in possession of pledged collateral should relinquish their favored position—for which presumably the Debtor received full consideration—for the benefit of creditors who do not have any security in their possession, or any security at all. Indeed, Section 77 does not even require that a proceeding under that section must result in *reorganization* (see Section 77(c) (7); Appendix to R. F. C. brief, p. 95).

While the record before the District Court might perhaps warrant a holding that the terms or details of any plan of reorganization, in the event of a sale of the collateral, might be, or even necessarily must be, *different* from any plan which would be worked out in the event the collateral were not sold, the record affords no basis whatever for a determination that *no* plan of reorganization could be consummated unless a sale of the collateral is prevented.

III.

Section 77 as construed by the Circuit Court of Appeals deprives petitioners of preexisting vested property rights without due process of law in violation of the Fifth Amendment.

By Section 2 of the Act of March 3, 1933, c. 204, 47 Stat. 1467, Section 77 is expressly made applicable to creditors "whose interests or debts, whether secured or unsecured," were acquired or incurred prior to the effective date of that section.

The court below held that Section 77, as construed and applied by it in the instant cases, did not violate the Fifth

Amendment because (R. 326) "the order of sale deals merely with the remedy" of petitioners. Petitioners, however, contend (1) that the injunctional order deprives them not merely of a remedy, but of a substantial, substantive right; and (2) that even if such order is held to be one which affects merely petitioners' remedy, it was an unreasonable and arbitrary modification and postponement of such remedy, and that, accordingly, on either theory, the order deprives petitioners of property in violation of the Fifth Amendment.

The basic purposes of a bankruptcy law are (1) distribution of the debtor's property among his creditors and (2) the discharge of the debtor from liability to pay his debts.[17] Both such purposes may be accomplished without necessarily disturbing the lien of a creditor holding collateral validly pledged to him by the bankrupt.

That is to say, bankruptcy need not disturb a valid lien on pledged collateral in the possession of a creditor in order (1) to discharge the debtor from his debt, or (2) to fully distribute the debtor's property among his creditors, since the debtor only has (a) a right to redeem the collateral, prior to sale by the pledgee, upon payment of the debt and

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[17] In *Matter of Klein* (note to *Nelson* v. *Carland*, 1 How. 265, 277 (1843)), Mr. Justice Catron said:

> "I hold, it [the bankruptcy power] extends to all cases where the law causes to be distributed, the property of the debtor among his creditors; this is its least limit. Its greatest, is a discharge of the debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject—distribution and discharge—are in the competency and discretion of Congress."

(b) an interest in any portion of the collateral, or the proceeds thereof, remaining after collection of the debt.

A bankruptcy act may, of course, void liens which would, but for the act, be valid, if such liens were created under circumstances which would constitute the transaction preferential or of a character which would defeat the primary purpose of all bankruptcy legislation, namely, the pro rata distribution of the debtor's assets among his creditors. But it has never been suggested that a bankruptcy act may extinguish non-preferential liens created by the debtor.[18]

Thus, this Court said, in *Mayer* v. *Hellman*, 91 U. S. 496, 501 (1875):

> "The great object of the Bankrupt Act, so far as creditors are concerned, is to secure equality of distribution among them of the property of the bankrupt. For that purpose, it sets aside all transactions had within a prescribed period previous to the petition in bankruptcy, defeating, or tending to defeat, such distribution. • • • *Those periods constitute the limitation within which the transactions will be exam-*

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[18] It is doubtful whether the power of Congress to pass laws on the "subject of bankruptcies" affords authority to prohibit the creation of non-preferential liens or to interfere in any manner with their terms or binding force, whether such liens are created either before or after the passage of the act. This question has not been decided by this Court. (See Louis B. Wehle, *"Railroad Reorganizations under Section 77 of the Bankruptcy Act: New Legislation Suggested,"* 44 Yale L. Jour. 197, 227.) An act which purports to impair valid liens, created by a debtor before or after the effective date of the act, cannot fairly be said to be an act on "the subject of bankruptcies." An act which affected absolute titles validly granted by the bankrupt would certainly not deal with the subject of bankruptcies. Moreover, bankruptcy legislation may not prohibit transfers of property rights and operates only on interests in property remaining in the debtor. See *Hanover National Bank* v. *Moyses*, 186 U. S. 181, 189 (1902).

ined and annulled, if conflicting with the provisions of the Bankrupt Act.

"Transactions anterior to these periods are presumed to have been acquiesced in by the creditors. There is sound policy in prescribing a limitation of this kind. *It would be in the highest degree injurious to the community to have the validity of business transactions with debtors, in which it is interested, subject to the contingency of being assailed by subsequent proceedings in bankruptcy.*"

The instant cases involve liens which are admittedly valid, both under and apart from the Bankruptcy Act (R. 324; Br. in Opp., p. 7). And it is our contention that if the injunction in question (operating as it does to defer *indefinitely* the right to realize a lien on readily marketable securities), is permitted by Section 77, the act deprives petitioners of property without due process of law in violation of the Fifth Amendment.

It is settled that all of the powers delegated to Congress under the Constitution are qualified by and subject to the restrictions of the Fifth Amendment.

This is true, for example, (a) of the war power (*Ex parte Milligan,* 4 Wall. 2, 119 (1866); *Ochoa* v. *Hernandez,* 230 U. S. 139, 153 (1913); *Hamilton* v. *Kentucky Distilleries & Warehouse Company,* 251 U. S. 146, 155, 156 (1919)), (b) of the power to tax (*Brushaber* v. *Union Pac. R. R.,* 240 U. S. 1, 24-25 (1916); *Barclay & Company, Inc.,* v. *Edwards,* 267 U. S. 442, 450 (1924); *Nichols* v. *Coolidge,* 274 U. S. 531, 542 (1927); *Blodgett* v. *Holden,* 275 U. S. 142, 147 (1927); *Heiner* v. *Donnan,* 285 U. S. 312, 326 (1932)), and (c) of the power to regulate Interstate Commerce (*Monongahela Navigation Co.* v. *United States,* 148 U. S. 312, 336 (1893); *United States* v. *Joint Traffic Association,* 171 U. S. 505, 571 (1898); *United States* v. *Lynah,* 188 U. S.

445, 471 (1903); *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 410 (1905); *Adair* v. *United States*, 208 U. S. 161, 180 (1908); *United States* v. *Cress*, 243 U. S. 316, 326 (1917)).

This Court has expressly declared that the bankruptcy power of Congress is subject to the Fifth Amendment, saying, in *Hanover National Bank* v. *Moyses*, 186 U. S. 181 (1902), that (p. 192):

> "Congress may prescribe any regulations concerning discharge in bankruptcy that are not so grossly unreasonable as to be incompatible with fundamental law, * * *"

Similarly, in *In re William W. Bradford, Jr., Bankrupt*, 7 F. Supp. 665 (D. Md., 1934), Judge Chesnut said (p. 674):

> "The exercise of the bankruptcy power by Congress, as is the case with other delegated powers, is subject to the requirement of the due process clause of the Fifth Amendment."

Legislation on the subject of bankruptcies must, therefore, be reasonable and not arbitrary. (See also *Holt* v. *Henley*, 232 U. S. 637, 639 (1914); *In re Dillard*, 7 Fed. Cas. 703, 704 (C. C., E. D. Va., 1873); *In re Sterba, Debtor*, (C. C. A. 7th), decided January 5, 1935; 48 Harv. L. Rev. 332, 333.)

It is settled that a right given or created by contract is "property" within the meaning of the Fifth and Fourteenth Amendments.[19] *Sinking-Fund Cases*, 99 U. S. 700,

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[19] Cases dealing with the latter amendment are applicable, since the restraint imposed by Congress by the due process clause of the Fifth Amendment is the same as that imposed upon the several States by the like clause of the Fourteenth Amendment. *Sinking-Fund Cases*, 99 U. S. 700, 718 (1878); *Hibben* v. *Smith*, 191 U. S. 310, 325 (1903); *Twining* v. *New Jersey*, 211 U. S. 78, 101 (1908); *Coolidge* v. *Long*, 282 U. S. 582, 596 (1931); *Heiner* v. *Donnan*, 285 U. S. 312, 326 (1932).

718 (1878); *Choate* v. *Trapp*, 224 U. S. 665, 678 (1912); *Highland* v. *Russell Car & Snow Plow Company*, 279 U. S. 253, 261 (1929). In the case of a pledge of marketable securities the very essence of the contract is the right, upon the pledgor's default, to sell the securities at such time as he may choose. (See *In re Hudson River Navigation Corporation*, 57 F. (2d) 175, 176 (C. C. A. 2d, 1932), *supra*.) It follows that a substantial taking of such right, for the benefit of others, falls within the inhibition of the Fifth Amendment.

Nor is the difficulty avoided by the mere statement that the injunction in the instant case deals only with petitioners' remedy. (See R. 326.) It must be borne in mind that the distinction between "right" and "remedy" is one of substance and not of form. As was stated by the Court in *VonHoffman* v. *City of Quincy*, 4 Wall. 535, 553 (1866):

> "• • • No attempt has been made to fix definitely the line between alterations of the remedy, which are to be deemed legitimate, and those which, under the form of modifying the remedy, impair substantial rights. Every case must be determined upon its own circumstances. *Whenever the result last mentioned is produced the act is within the prohibition of the Constitution, and to that extent void.*"

Moreover, this Court has held that a remedy given not by a statute but by the specific terms of a contract is part and parcel of the obligations of that contract, stating in *Bronson* v. *Kinzie*, 1 How. 311, 320 (1843):

> "In the case before us, the conflict of these laws with the obligations of the contract is made the more evident by an express covenant contained in the instrument itself, whereby the mortgagee, in default of payment, was authorized to enter on the premises,

> and sell them at public auction; and to retain out of the money thus raised, the amount due, and to pay the overplus, if any, to the mortgagor. It is impossible to read this covenant, and compare it with the laws now under consideration, without seeing that both of these acts *materially interfere with the express agreement of the parties contained in this covenant.*"

The rights of petitioners as pledgees are derived, not from any statute or rule of law, but from the specific and detailed terms of the several contracts of pledge. In this situation, in the language of the court in *Galey* v. *Guffey*, 94 Atl. 238, 240 (Pa., 1915):

> "• • • the rule is that the remedy becomes part of the obligation of the contract, and any subsequent statute which affects the remedy impairs the obligation, and is unconstitutional."

And even if the general right of a pledgee to sell pledged collateral were a mere matter of remedy, if by the terms of the pledge agreement the pledgee is given an express right to sell in a particular way, that right is a substantive one and any interference with such right is as much an interference with the obligations of the contract as would be interference with any other term thereof. The injunction in the instant cases accordingly affected not merely the remedy afforded the pledgees, but the obligations of the contracts themselves.

Furthermore, since freedom to *carry out or enforce*, as well as to enter into, contracts in respect to property and private affairs is protected by the due process clause of the Fifth Amendment (*Highland* v. *Russell Car & Snow Plow Company*, 279 U. S. 253, 261 (1929)), an unreasonable or

arbitrary impairment of the right to *enforce* a contract deprives persons of a substantial property right, even if such right to enforce is derived solely from a statute and not from the contract itself. Thus, this Court said, in *Louisiana* v. *City of New Orleans*, 102 U. S. 203, 206 (1880):

> "The obligation of a contract, in the constitutional sense, is the means provided by law by which it can be enforced,—by which the parties can be obliged to perform it. *Whatever legislation lessens the efficacy of these means impairs the obligation.* If it tend to postpone or retard the enforcement of the contract, the obligation of the latter is to that extent weakened. * * * Any authorization of the postponement of payment, or of means by which such postponement may be effected, is in conflict with the constitutional inhibition."

The Court, again, in *Lynch* v. *United States*, 292 U. S. 571 (1934), said (p. 580):

> "Contracts between individuals or corporations are impaired within the meaning of the Constitution whenever the right to enforce them by legal process is taken away or materially lessened."

A fortiori, a contract is impaired, within the meaning of the Constitution, whenever the right to enforce it through *extra-legal* action is taken away or materially lessened.

Even if, therefore, it be held that the injunction in the instant cases touched only petitioners' remedy, nevertheless, if the right to enforce the pledge agreements is by the injunction postponed for an unreasonable period or in an arbitrary manner, such postponement is a violation of due process. *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398, 445 (1934).

In determining whether the injunctional order is an unreasonable modification or postponement of petitioners' right to enforce the pledge agreements it should be noted that Section 77 is not, by its terms, emergency legislation, and the period of its duration is unlimited. The *Blaisdell* case, the reasoning of which applies equally to due process under the Fifth Amendment (see 290 U. S. 398, 448, and footnote 19, p. 64, *supra*), dealt with emergency legislation and is, to a large extent, based on reserved emergency powers. *W. B. Worthen Co.* v. *Thomas,* 292 U. S. 426, 432 (1934). Those decisions, which have permitted the time for enforcement of contracts to be postponed for a limited period under emergency conditions, have been said by this Court to go "to the verge of the law." *Pennsylvania Coal Co.* v. *Mahon,* 260 U. S. 393, 416 (1922).

Resolving all doubts in favor of the restraining order, and assuming for argument that by a bankruptcy act (not enacted as emergency legislation) a court may lawfully be authorized to postpone the enforcement of certain liens for a reasonably limited period, petitioners contend that in the instant cases their right to realize upon the pledged collateral has been unreasonably modified and postponed.

The injunction in question restrains petitioners' right to sell mortgage bonds listed on the New York Stock Exchange, *i. e.,* property, the market value of which fluctuates from day to day, following the law of supply and demand, varying market conditions, the changing financial status of the issuers and the many other circumstances which influence prices in the open market. The pledgees reserved to *themselves* the right to sell the collateral after default at any time *they* deemed proper. They are expressly permitted to choose the day and the hour for sale to the end that they may exercise *their own* best judgment as to the propitious time.

When the Debtor's petition for an injunction was filed (September 26, 1933) the collateral held by petitioners had a market value (based on past prior sales on the New York Stock Exchange) of $4,153,355, an amount substantially in excess of the $3,866,923.34 principal amount of indebtedness then owing to petitioners. On October 15, 1934, when the petition for certiorari was prepared, the market value of the collateral (on the same basis) was $2,614,755. On January 12, 1935, as this brief is being prepared, the market value of the collateral (on the same basis) is $2,389,980. It is apparent, therefore, that *any* postponement of the sale of collateral of the character in question may cause substantial damage to the pledgees—as indeed the injunction in these cases has already damaged petitioners.

A restraint on the right to foreclose a real estate mortgage, even for a long period, may be reasonable because of the non-fluctuating character of the security. We submit, however, that a restraint on the right to sell pledged securities, such as those here involved, for *any* length of time is unreasonable. This proposition is expressed succinctly in *In Re Hudson River Navigation Corporation*, 57 F. (2d) 175 (C. C. A. 2d, 1932), where Judge L. Hand said, with regard to the rule that bankruptcy does not touch the power of a pledgee of securities to close out his collateral (p. 176):

> "Nothing would be more disturbing to transactions of the kind than a doubt thrown upon that ruling. Millions of dollars are daily lent upon like collateral, which fluctuates from hour to hour; *unless the pledgee is free to chose his time to sell, his security may disappear.*"

Moreover, the restraining order is arbitrary and unreasonable even apart from the peculiar character of the collateral involved.

The injunction prohibited the sale of the collateral "until further order of this Court" (R. 104). This language indicates that at some *wholly indefinite* time in the future the order may be vacated and petitioners permitted to exercise their right of sale. Just when this will be, is indicated only by the recital in the order (R. 104) that the injunction was "necessary" for the enforcement of Section 77 "pending the preparation *and consummation* of said reorganization plan." As to when the "preparation and consummation" of a plan will occur, we have only the statement of the court below that such a plan must be "forthcoming with reasonable promptness" (R. 325).

What is the "reasonable promptness" with which a plan must be presented and consummated?

The Debtor's original petition was approved June 7, 1933 (R. 2). The restraining order was entered November 22, 1933 (R. 100), more than five months later, and this order was affirmed July 23, 1934 (R. 326), more than thirteen months after the Debtor's petition was filed. During those thirteen months no plan of reorganization was even proposed. The court below therefore clearly assumed that thirteen months was not an unreasonable time within which to *present* a plan of reorganization; and we concede that a plan of reorganization of a transcontinental railroad system cannot be formulated, in the nature of things, within any short period of time. If thirteen months is not an unreasonable time in which to present a plan, there is no reason to believe that the court below would determine that two or three or more years are unreasonable.

As a matter of fact, no plan has *as yet been even proposed*, notwithstanding nearly two years have elapsed since the filing of the Debtor's petition, and very recently the Debtor's Trustees advised the Interstate Commerce Com-

mission that there is no likelihood of any plan being formulated in the immediate future. (See Appendix to Brief of R. F. C., pp. 167-173.)

Even after a plan has been formulated, and before it can be voted upon by the creditors and stockholders, the Interstate Commerce Commission must hold a public hearing thereon. Thereafter, it must submit a report with respect thereto, whereupon the plan and report must be submitted to the creditors and stockholders (Section 77 (d); see Appendix to R. F. C. brief, pp. 97-98). If the creditors and stockholders should vote to accept a plan different from the one approved by the Commission, the new plan must be referred back to the Commission (Section 77 (f); see Appendix to R. F. C. brief, pp. 100-101) for another public hearing; and finally the plan must be submitted to the court for its approval (Section 77 (g); see Appendix to R. F. C. brief, pp. 101-102). It is thus obvious that several years may elapse between the time a plan is initially formulated and its final approval by the court, without counting further delays which may arise in the event of an appeal from the decision of the court. (See Wehle, "Railroad Reorganization Under Section 77 of the Bankruptcy Act: New Legislation Suggested," 44 Yale L. Journ., 197, 202-204).

What, then, constitutes the "reasonable promptness" to which the court below refers? How long is a "reasonable" time for plan to be in the tortuous process of approval (by the Interstate Commerce Commission, by the creditors and stockholders, and by the court)? It is obvious, we submit, that no *definite* answer can be given to such questions. The result is that the petitioners' rights to realize upon their pledges have been suspended for an undeterminable and indefinite time—and a time not limited to any emergency—during which the value of such rights

may largely disappear, as in fact it has already largely disappeared. Such a result is clearly a taking of petitioners' property, which cannot be justified by the nice, but wholly erroneous, statement that the District Court dealt "merely with the remedy" of petitioners. *W. B. Worthen Co.* v. *Thomas*, 292 U. S. 426, 434 (1934). See also *Barnitz* v. *Beverly*, 163 U. S. 118 (1896); *Hanauer* v. *Republic Bldg. Co.*, 255 N. W. 136 (Wis., 1934); *Vanderbilt* v. *Brunton Piano Co.*, 169 Atl. 177 (N. J., 1933).

In any event, no limitation on the right of petitioners to sell the pledged collateral could be more arbitrary than one dependent upon the individual discretion of a judge *where no standards for the exercise of such discretion are set up by the statute.* Cf. *Panama Refining Co.* v. *Ryan*, No. 135, Present Term. The injunction substitutes the discretion of the judge as to the time at which a sale will be for the best interests of all concerned (including the Debtor and other creditors) for the vested contract right of petitioners to exercise their own judgments as to the time at which a sale will be for the best interests, not of all concerned but, of petitioners alone.

Under the Fifth Amendment, the taking of property from one owner and giving it to another is also prohibited. *Ochoa* v. *Hernandez*, 230 U. S. 139, 161 (1913); *Loan Association* v. *Topeka*, 20 Wall. 655, 662, 664 (1874); *Chicago, Burlington & Quincy Railroad Co.* v. *Chicago*, 166 U. S. 226, 235 (1897) and *Missouri Pacific Railway* v. *Nebraska*, 164 U. S. 403, 417 (1896). The avowed purpose as well as the actual effect of the restraining order is to take away from petitioners their right to sell the pledged collateral, in order to benefit the other creditors of the Debtor and even the Debtor itself, since the Debtor's title to its property may be retained by it even after a reorganization under the provisions of Section 77. (See Section 77 (j); Appendix to R. F. C. brief, p. 104). The Cir-

cuit Court of Appeals itself recognized this "taking" when it said (R. 325):

> "*Balancing equities*, we find the court wisely sought to protect the great mass of debtor's creditors without injuring the position of appellants. • • •"

It is thus clear that the District Court was seeking to protect the Debtor's other creditors, but the court could not possibly give this protection without materially "injuring the position of appellants."

The instant cases are readily distinguishable from cases where this Court and other courts have sustained injunctions prohibiting the prosecution of suits to foreclose real estate mortgages, instituted after or within four months of the filing of petitions in bankruptcy. In that class of cases, foreclosure may be had in the bankruptcy court as effectively as in any other court; and the effect of the injunction is merely to substitute one forum for another. In such cases the mortgagee's right to sell the property is not denied, but permitted, and presumably the foreclosure will be carried out quite as satisfactorily in the bankruptcy court as in some other court. The theory of such cases, as poinfed out in *Allebach* v. *Thomas*, 16 F. (2d) 853 (C. C. A. 4th, 1927), which case was relied upon by the court below (R. 326), is that the mortgagee's contract is not impaired by the alteration of the remedy "so long as an equally adequate remedy is afforded" (p. 855). In the instant cases the petitioners are not given an adequate substitute for the right of which they have been deprived.[20]

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[20] It should be noted that petitioners have received no interest on their notes since the restraining order was entered (R. 341-342). Moreover, they can receive no income from the pledged collateral which they hold since, by orders entered on July 26, 1933, and September 26, 1933, respectively, the District Court authorized the Debtor's Trustees to refrain from paying the interest due on the Short Line bonds (R. 22) and on the Debtor's First and Refunding bonds. Cf. *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398, 445 (1934).

Moreover, mortgaged real estate is always in the possession of the bankrupt and hence, by the terms of the Act, comes under the exclusive jurisdiction of the bankruptcy court. The commencing in any other court of a suit to foreclose a lien on such property would inevitably interfere with the exclusive jurisdiction of the bankruptcy court, assumed prior to the institution of the foreclosure suit. *Straton* v. *New*, 283 U. S. 318, 321 (1931); *Ex Parte Baldwin*, 291 U. S. 610 (1934). Validly pledged securities, however, are not in the possession of the bankrupt at the time of filing the bankruptcy petition and hence do not pass into the control and custody of the bankruptcy court. The pledgee does not need to seek the aid of that court, or any other court, to realize on the pledged collateral, and his act in so doing cannot constitute an interference with the exclusive jurisdiction of the bankruptcy court or with its administration of the bankrupt's estate.

It is true that under Section 77 (l), p. 92, *infra*, the court is given the right to stay pending suits against the Debtor, but, as this clause does not purport to cover enforcement proceedings, such as sales, which do not involve judicial action, it is not necessary to consider the validity of such provision.

For the foregoing reasons, it is respectfully submitted that Section 77, as construed and applied by the court below, deprives petitioners of their property in violation of the Fifth Amendment.

IV.

Practical considerations affecting the decision of this Court.

The questions presented are of unusual importance for they affect the basis upon which literally hundreds of millions of dollars of now outstanding collateral loans were made,[21] and, if the decision of the court below stands, banks and business houses generally will have to revise the entire theory and technique of such loans.

In recent years, lenders of money have hesitated to make loans for long terms, so that present day borrowings are primarily for short terms and are largely obtained by the use of securities and collateral. In such transactions, the borrower is able to secure the requisite funds with despatch by the pledge of his securities; the lender is protected by the collateral pledged, and, most important of all, his loan *is liquid* by reason of his right to realize quickly upon the collateral, if necessary.

Until the decision below, neither insolvency nor bankruptcy of the borrower has interfered with the lender's right to realize promptly upon the pledged collateral. The public policy involved in this rule of law is stated in *In re*

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[21] On October 17, 1934, the total outstanding loans of member banks in the Federal Reserve System secured by stocks and bonds was $4,178,000,000 (Federal Reserve Board Bulletin for December, 1934, p. 789). Since loans by member banks of the System constitute about 60% of the total bank loans (see *ibid.*, p. 790), it would seem that the total collateral loans presently outstanding by banks and business houses generally is in excess of $6,000,000,000, of which apparently less than $1,000,000,000 are brokers' loans (see *ibid.*, 791; see also Federal Reserve Board Weekly Report, dated January 7, 1935). Large amounts of such collateral consist of secured obligations of the borrower. See Hatch, "A Form of Depression Finance—Corporations Pledging Their Own Bonds," 47 Harv. L. Rev. 1093.

Hudson River Navigation Corporation, 57 F. (2d) 175 (C. C. A. 2d, 1932), *supra*, as follows (p. 176):

> "* * * Millions of dollars are daily lent upon like collateral, which fluctuates from hour to hour; unless the pledgee is free to choose his time to sell, his security may disappear. * * * The pledgee, having taken possession of the documents, supposes himself for just that reason to be the sole judge of his necessities, and lends on that understanding."

Within the last two years Congress has greatly enhanced the scope of the Bankruptcy Act. By Section 77 the Act is made applicable to inter-state railroads, and, by Section 77-B (Act of June 7, 1934; U. S. C. A., Title 11, Sec. 207), to corporations generally, including public utilities and intra-state railroads. As a result of the new provisions, nearly every borrower of money upon pledged collateral is in a position voluntarily and without notice to creditors to subject himself or itself to the jurisdiction of a bankruptcy court.

While the decision in the instant case applies only to a proceeding under Section 77, and, in a strict sense, only to a case where the pledged collateral consists of bonds of the pledgor, there can be no doubt but that such decision will be held generally applicable to proceedings under Section 77-B (see comparative table of jurisdictional provisions in petitioners' petition for certiorari, pp. 32-33), and to pledged collateral of all kinds (see *In re White Truck & Transfer Co.* (S. D. Cal.), decided Sept. 4, 1934).

If the lender of money upon collateral is to be subject to the hazard of being prevented from realizing on the

pledge by an injunction, with the consequent freezing of his short term loan into a long term loan for an indefinite period, it is not unlikely that the lender will either (a) refuse to lend the money at all, or (b) require a much greater margin of security. In either event, the result will be a sharp tightening of credit at a time when Congress and the Administration are earnestly endeavoring to accomplish the opposite result.

Considerations such as these tend strongly, we submit, to indicate that Congress did not intend that Section 77 should have the effect ascribed to it by the courts below. (See comment of Senate Judiciary Committee with respect to subdivision (h) of Section 74, enacted at the same time as Section 77, S. Rept., No. 1215, 72d Cong., 2 Sess., p. 5, p. 47, *supra*).

The court below stated (R. 323) that "we are justified in giving to the amendment a liberal construction." With this we agree. But it is one thing to construe the statute liberally and another thing to "construe" it by "balancing equities" between different classes of creditors, especially when such construction (a) is based upon abstractions and generalities not predicable upon any provision of the statute, and (b) results in overturning a long line of cases reaching a contrary result.

The court below apparently believed that the District Court possessed authority to issue the injunction because (a) it would be of benefit to the other creditors, and (b) it would not harm petitioners. Thus, the court stated (R. 324-325):

> "The controversy was restricted to a restraining of the immediate pursuit of a remedy by the cred-

> itors *in order that a plan might be presented which would take care of appellants' claims in full* but without special and irreparable injury to other creditors • • • less fortunate in the amount and character of their security.
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> • • • • • •
>
> "Appellants have received and will probably continue to receive the prompt payment of interest upon their claims • • •. *Balancing equities,* we find the court wisely sought to protect the great mass of debtor's creditors *without injuring the position of appellants* • • •."

We reject the theory that the jurisdiction of the court could be determined by "balancing equities." But even on this theory, the court below proceeded under *serious misapprehension of the facts.*

Contrary to the court below (R. 325), petitioners have received no interest whatever on their loans since the injunction was entered (R. 341-342). Indeed, the avowed purpose of the injunction was to enable the debtor to discontinue interest payments without any risk of a sale of the collateral (R. 43; also, R. 13-14, 19-20, 29, 316). In addition to the principal amount of the loans, interest is now due and owing to petitioners in the approximate amount of $310,000.

Nor is there any basis for the statement that the injunction was necessary "in order that a plan might be presented which would take care of appellants' claims in full." Putting aside the fact that no plan was before the court when the statement was made and the fact that none has since been formulated, there was nothing before the court (and in the nature of things there could not be) from which it could properly assume that any plan to be hereafter consummated would take care of petitioners' claims in full.

As for the court's statement (R. 325) that the injunction did not injure petitioners, it has already been pointed out that (based on last prior sales on the New York Stock Exchange) the market value of the pledged collateral held by petitioners has declined more than $1,700,000 between the date when the debtor's petition for an injunction was filed and the present time (see p. 12, *supra*), with the result that the petitioners' loans, which possessed a margin of security when the debtor's petition was filed, are *now* seriously under-margined.

These serious misapprehensions under which the court below labored serve further to demonstrate, we believe, the error of the court's approach to both the questions of construction and those of constitutionality which were before it.

V.

The District Court was without jurisdiction to issue an injunction against the non-resident banks.

The petitioners in Nos. 481 to 484, inclusive, 487 and 488, *i. e.*, the non-resident banks, contend that the District Court was without jurisdiction to issue the injunction as to them for reasons wholly apart from those hereinbefore discussed.

The non-resident banks not only were not parties to the proceedings in the District Court, but were not then and are not now residents of or doing business in the Northern District of Illinois. The bonds which they hold as collateral for notes of the Debtor and the notes themselves are held by said banks, and the notes are payable, at the respective places of business of said banks in New York City and St. Louis (R. 52-55, 116-119, 319).

Upon these facts, the District Court clearly would have been without authority in an ordinary bankruptcy proceeding to issue an injunction against the non-resident banks.

Section 2 of the Bankruptcy Act, as amended, provides (p. 91, *infra*) that—

> "• • • courts of bankruptcy • • • are hereby invested, *within their respective territorial limits* as established • • •, or as they may be hereafter changed, with such jurisdiction • • •."

Since the territorial limits imposed by Congress upon the district courts are thus expressly made applicable to courts of bankruptcy (*Robertson* v. *Railroad Labor Board*, 268 U. S. 619, foot-note at pp. 624-625 (1925)), it follows that even though such courts have jurisdiction over the property of the bankrupt *"wherever situated"* (see p. 85, *infra*), they are without authority to exercise a jurisdiction *in personam* beyond their territorial limits. Accordingly, a bankruptcy court sitting in one district is without authority to enjoin a person in another district, over whom it has no personal jurisdiction, from doing any act wholly outside the territorial limits of the court.[22] *Acme Har-*

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[22] This is in accordance with the general rule that a decree of injunction operates *in personam* and will not issue against a person not within or subject to the jurisdiction of the Court. *Chase National Bank* v. *City of Norwalk*, 291 U. S. 431 (1934); *Scott* v. *Donald*, 165 U. S. 107, 117 (1897); *Clarke* v. *Boysen*, 39 F. (2d) 800, 815 (C. C. A. 10th, 1930), cert. den. 282 U. S. 869 (1930); *Guaranty Trust Co.* v. *Fentress*, 61 F. (2d) 329, 333 (C. C. A. 7th, 1932).

Cf. Section 19 of the Act of October 15, 1914, c. 323, 38 Stat. 738 (U. S. C. A., Title 28, Sec. 383), which provides that:

> "Every order of injunction or restraining order • • • shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, • • •."

Cf. also Section 57 of the Judicial Code (U. S. C. A., Title 28, Sec. 118); *General Investment Co.* v. *Lake Shore Ry.*, 260 U. S. 261, 279-280 (1922); *Chase* v. *Wetzlar*, 225 U. S. 79, 88-89 (1912).

vester Co. v. *Beekman Lumber Co.*, 222 U. S. 300, 310, 311 (1911); *Isaacs* v. *Hobbs Tie & Timber Co.*, 282 U. S. 734, 738 (1931); *Progressive Building & Loan Co.* v. *Hall*, 220 Fed. 45 (C. C. A. 4th, 1914); *Staunton* v. *Wooden*, 179 Fed. 61, 63-64 (C. C. A. 9th, 1910); *In re J. & M. Schwartz*, 204 Fed. 326, 328-329 (E. D. N. Y., 1913); see also *In re Ohio Copper Mining Co.*, 241 Fed. 711 (S. D. N. Y., 1917); *In re Geller*, 216 Fed. 558 (D. N. J., 1914).

Assuming that the District Court would have been without authority to issue an injunction against the non-resident banks upon the facts in this case in an ordinary bankruptcy proceeding (R. 320), the court below held that Section 77 had "extended the court's jurisdiction over the debtor's property so as to include the *entire United States*" (R. 322), and that, therefore, it could issue a decree *in personam* against said banks even though they were not within, and held the pledged collateral beyond, the geographical limits of the District Court. This conclusion is plainly erroneous.

As previously stated (p. 36, *supra*), Section 77 (n) expressly provides that, *unless changed by Section 77*, and unless inconsistent therewith, the jurisdiction and powers of the court in a proceeding under that section shall be *those possessed by the court in an ordinary voluntary bankruptcy proceeding.*

There is, however, nothing in Section 77 which expressly or by implication makes the limits of the court "co-extensive with the territorial boundaries of the United States" (R. 322), or which gives to a court proceeding under that section a wider jurisdiction *in personam* or a wider jurisdiction over property pledged by the debtor than is possessed by a bankruptcy court generally. In fact, the contrary appears.

The provision upon which the court below relied is Section 77 (a), which provides in part (p. 92, *infra*) that—

> "The petition shall be filed with the court in whose *territorial jurisdiction* the railroad corporation, • • • has had its principal • • • office, • • •. If the petition is so approved, the court • • • shall, • • • *have exclusive jurisdiction of the debtor and its property wherever located.*"

The particular phrase relied upon ("exclusive jurisdiction of the debtor and its property wherever located") follows a sentence in which the words "territorial jurisdiction" are unmistakably used to refer to the *geographical limits of the judicial district*, and does not expressly or by necessary implication make the jurisdictional limits of the District Court "coextensive with the territorial boundaries of the United States," or extend the court's jurisdiction "so as to include the entire United States" (see R. 322).

In terms, the court is given exclusive jurisdiction of (a) "the debtor," and (b) "its property wherever located." This language may be given full effect without "interpreting" it as by *implication* (a) amending the statute fixing the territorial limits of the District Court, or (b) giving the court a wider jurisdiction of the debtor's property, or (c) giving the court a wider jurisdiction *in personam* with respect to creditors of the debtor, than is possessed by a bankruptcy court generally with respect to property and creditors of the bankrupt.

To make effective the grant of exclusive jurisdiction over the "debtor," there is no reason why the court must be deemed to be sitting as a bankruptcy court throughout the entire United States, or why the court must be deemed

to have *personal jurisdiction* over all *creditors of the debtor* wherever found. The filing of a petition under Section 77 in a district court is a *caveat* to all other courts (*cf. Mueller* v. *Nugent*, 184 U. S. 1, 14 (1902)), and it no doubt follows that thereafter no other court may independently entertain proceedings by or against the debtor in the absence of authority from the former court. See *Isaacs* v. *Hobbs Tie & Timber Co.*, 282 U. S. 734 (1931).

Similarly, to make effective the grant of exclusive jurisdiction over the debtor's "property wherever located" there is no reason why the court must be deemed to be sitting as a bankruptcy court, with all the powers of such, in every place where property in which the debtor is interested may be found or where creditors of the debtor may be located.[23]

---

[23] To sustain the decision of the court below as to the non-resident banks, it is necessary to construe Section 77 as doing more than merely changing the legal situs of the pledged bonds. Even if Section 77 be deemed to change the legal situs of the pledged bonds held by the non-resident banks (see *Guaranty Trust Co.* v. *Fentress*, 61 F. (2d) 329 (C. C. A. 7th, 1932)) and to give such bonds a legal situs within the Northern District of Illinois, the District Court would still be without authority to issue an injunction against said banks.

A court does not acquire jurisdiction to proceed personally against one over whom it has no personal jurisdiction merely because property of such person is found within the geographical limits of the court. Under proper *statutes*, a court may attach a non-resident's property and proceed by publication against such non-resident in so far as any judgment rendered can be satisfied out of the property. Such a proceeding is a *quasi in rem* action and does not permit the court to render a personal judgment against such a non-resident. *Pennoyer* v. *Neff*, 95 U. S. 714 (1877). Since an injunction operates *in personam*, it cannot be predicated upon a *quasi in rem* jurisdiction. See *Skinner* v. *Ed. Pict. Sec. Corp.*, 129 Atl. 857 (Del. Ch., 1925); *Beale, "The Jurisdiction of Courts over Foreigners,"* 26 Harv. L. Rev. 283, 297.

By the grant of exclusive jurisdiction over the debtor's property "wherever located," Section 77 may, perhaps, impliedly prevent *any other court* from *independently* entertaining proceedings with respect to such property, even as to property not in the custody or control of the court in which the debtor's petition is filed. The district court in which the petition has been filed would, however, still retain "exclusive" jurisdiction of the debtor's property wherever located even though, in order to deal with property not actually or constructively in the debtor's possession, and not within the territorial limits of the district, it may have to direct the institution (by the debtor or its trustee) of legal proceedings in another jurisdiction. In other words, the court's jurisdiction over the debtor's property is not rendered non-exclusive merely because situations may arise in which, because of limitations (a) upon that court's jurisdiction *in personam*, and (b) over property not in its possession, it may have to seek the aid of another district court in order to reach persons who are not before it and property which is not in its possession. See *Carpenter* v. *International-Great Northern R. Co.*, 5 F. Supp. 768 (S. D. Tex., 1933), *supra*.

Convincing proof of the meaning of the phrase "exclusive jurisdiction of the debtor and its property wherever located" is found—as has been brought out in another connection (p. 40, *supra*)—in repeated decisions of this and other courts wherein the jurisdiction of a bankruptcy court with respect to the person and property of the bankrupt has been defined in language *practically identical with that of the phrase in question.*

Thus, in *Gross* v. *Irving Trust Co., supra,* this Court said (p. 344):

> "Upon adjudication of bankruptcy, title to all the property of the bankrupt, *wherever situated*, vests in the trustee * * *. The bankruptcy court has *exclusive jurisdiction*, * * *."

Likewise, in *Isaacs* v. *Hobbs Tie & Timber Co.*, *supra*, the Court stated (p. 737):

> "* * * all property owned and possessed by the bankrupt vests in the trustee * * * *no matter whether situated within or without the district in which the court sits.* * * * the bankruptcy court has *exclusive jurisdiction* to deal with the property of the bankrupt estate."

The use by Congress, in fixing the jurisdiction of the court over the person and property of the debtor in a proceeding under Section 77, of language identical with that employed over a long period of years by this Court in describing the jurisdiction of a bankruptcy court over the person and property of a bankrupt, is altogether persuasive, if not conclusive, evidence that Congress intended that such jurisdictions should be the same. (See cases cited at p. 41, *supra*.)

By statutory provision of long standing and rarely departed from, "the jurisdiction of a district court *in personam* has been limited to the district of which the defendant is an inhabitant or in which he can be found" and, "It is not lightly to be assumed that Congress intended to depart from a long established policy." *Robertson* v. *Railroad Labor Board*, 268 U. S. 619, 627 (1925); *General Investment Co.* v. *Lake Shore Railway*, 260 U. S. 261 (1922). Accordingly, had it been the intent of Congress to make the territorial limits of the court, in a proceeding under

Section 77, coterminous with the entire nation, or to give the court jurisdiction over all *creditors of the debtor* wherever found, it must be presumed that apt language to such effect would have been employed. In the past, when Congress has intended that the jurisdiction *in personam* of a district court should be exercised beyond its geographical limits, it has indicated such intention in unmistakable terms.[24]

Further proof that Section 77 does not evidence the legislative intent ascribed to it by the courts below is found in the absence of any provision in Section 77, or elsewhere, creating a mechanism for the functioning of a court with nation-wide territorial limits. By Section 2 of the Bankruptcy Act, as amended (p. 91, *infra*), wide powers are conferred upon a bankruptcy court. By Section 77 (n) these powers, so far as consistent with Section 77, are conferred upon the court in a proceeding under that section. If it had been intended by Congress that such powers could be asserted *anywhere in the United States*, it is reasonable to assume that Congress would have provided that the process of the court might run into every part of the United States. (Cf. *Toland* v. *Sprague*, 12 Pet. 300, 328 (1838); *Staunton* v. *Wooden*, 179 Fed. 61, 64 (C. C. A. 9th, 1910).) Such a power is indispensable if the court is to be able to enforce decrees *in personam* against persons who are not within the limits of the district in which the court is sitting.

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[24] See the Act of March 3, 1873, c. 226, §4, 17 Stat. 485, 509; Act of July 2, 1890, c. 647, §§4, 5, 26 Stat. 209, 210 (U. S. C. A., Title 15, Secs. 4 and 5); Act of Sept. 19, 1922, c. 345, 42 Stat. 849 (U. S. C. A., Title 28, Sec. 112).

The court below placed reliance upon the fact that Section 77 "was intended to • • • exclude ancillary receivership proceedings in bankruptcy cases wherein railroad corporations were the bankrupts" (R. 322). But this fact contradicts rather than sustains the decision below.

In essence, the goal of Section 77 was to make possible the reorganization of railroads, many of whom were in financial distress, on a more uniform, efficient and less expensive basis than such reorganizations had been carried out in the past. To this end, Congress provided for a reorganization *in bankruptcy* such as theretofore had been possible only in *an equity receivership*, but with certain restrictions (*e. g.*, requiring the approval of any plan of reorganization by the Interstate Commerce Commission, etc.) not applicable to equity receiverships.[25]

One object of this device was to obviate costly and cumbersome *ancillary receiverships* (see p. 35, *supra*). Such ancillary receiverships are necessary in interstate railroad receiverships because an equity receiver is without title to, and the court without jurisdiction over, property beyond the territorial limits of the court. *Great Western Mining Co.* v. *Harris*, 198 U. S. 561, 577 (1905); *Sterrett* v. *Second Nat'l Bank*, 248 U. S. 71, 76, 77 (1918). A bankruptcy court, however, *unlike a receivership court*, has always had jurisdiction of the bankrupt's property *wherever situated*, and accordingly, ancillary bankruptcy proceedings *in the nature of ancillary receivership proceedings* are seldom if

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[25] See H. Rept. No. 1897, 72nd Cong. 2d Sess., p. 5; 76 Cong. Rec., pp. 2917, 2923, 4880, 5106-5107, 5108, 5128, 5356, 5359; *Lansdown* v. *Faris*, 66 F. (2d) 939, 940-941 (C. C. A. 8th, 1933).

ever necessary,[26] although in order to reduce the bankrupt's property to possession from persons who are not before it, a bankruptcy court may have to seek the aid of a foreign

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[26] Ancillary receiverships in equity are independent of the principal receivership (*Coltrane* v. *Templeton*, 106 Fed. 370 (C. C. A. 4th, 1901); *Shinney* v. *North American Savings, Loan & Bldg. Co.*, 97 Fed. 9 (C. C., D. Utah, 1899); cf. *Mitchell* v. *Maurer*, No. 54, Present Term); and all jurisdictional requirements must be satisfied (*Central R. R. & Banking Co. of Ga.* v. *Farmers' Loan & Trust Co. of N. Y.*, 56 Fed. 357 (S. D. Ga., 1893)). Accordingly, a proceeding for the appointment of an ancillary receiver must be instituted by a creditor in that jurisdiction. The receiver appointed in the principal receivership cannot petition *ex parte* for an ancillary receivership (*In re Brant*, 96 Fed. 257 (S. D Cal., 1899); cf. *Mitchell* v. *Maurer*, No. 54, Present Term; *Greene* v. *Star Cash & Package Car Co.*, 99 Fed. 656 (C. C., D. Conn., 1900)). Moreover, the ancillary court is under no compulsion to conform its proceedings to those of the principal court, and if it believes that such action would prejudice the resident creditors in the ancillary jurisdiction, it will refuse to do so (*Coltrane* v. *Templeton*, 106 Fed. 370 (C. C. A. 4th, 1901); *Shinney* v. *North American Savings, Loan & Bldg. Co.*, 97 Fed. 9 (C. C., D. Utah, 1899); *Guarantee Trust and Safe Deposit Co.* v. *Philadelphia R. & N. E. R. Co.*, 69 Conn. 709 (1897)).

Ancillary receiverships in equity are thus really *ancillary administrations*, as distinguished from exercises of ancillary jurisdiction in aid of a single court administering a bankrupt's assets. It was these independent proceedings, unknown in bankruptcy, which Section 77 was intended to eliminate. But the purpose to eliminate these ancillary administrations with the attendant appointment of an ancillary trustee or trustees, does not indicate an intent to give the court in a proceeding under Section 77 a territorial jurisdiction wholly at variance with the ordinary bankruptcy court.

An ancillary proceeding in bankruptcy is in no sense an *independent proceeding*, but is invoked by the trustee appointed by the bankruptcy court having the administration of the bankrupt's estate, and is strictly incidental to and in aid of the latter court. See *Lazarus* v. *Prentice*, 234 U. S. 263, 267 (1914). Whether such ancillary jurisdiction shall be invoked rests within the discretion of the bankruptcy court approving the petition in bankruptcy. In so far as a bankruptcy court wishes to assert jurisdiction *in personam* over persons outside its territorial limits, it may and must, through its trustee, invoke the ancillary jurisdiction of a court whose jurisdiction *in personam* reaches such person. This, however, in no way interferes with the "exclusive jurisdiction" of the bankruptcy court to administer the *entire estate* of the bankrupt, "wherever situated," free from interference by *other courts*.

court (see cases, p. 81, *supra*). The manifest purpose of Congress, therefore, in using the language in question was to make it clear that in railroad reorganization proceedings under the Bankruptcy Act, unlike railroad reorganizations in equity receiverships, the court should have the same exclusive control over the debtor railroad and its property as is possessed by a bankruptcy court in an ordinary bankruptcy (*i. e.*, liquidation) proceeding.[27]

But, while Congress intended to eliminate ancillary reorganization proceedings *as such*, with the attendant appointment of ancillary "receivers," it did not declare that the territorial limits of the court should be co-extensive with the United States; nor did it declare that the process of the court might run anywhere in the United States; nor did it give the court such a jurisdiction as necessarily to imply an intent to do either of these things. Just as a bankruptcy court in an ordinary bankruptcy proceeding, though having *"exclusive jurisdiction"* of the bankrupt and his property *"wherever situated,"* is remitted to proceedings by the trustee in a foreign jurisdiction where such step is necessary in order to compel or prevent action by one over whom it has no personal jurisdiction (p. 81, *supra*), so the bankruptcy court in a proceeding under Section 77 is of necessity remitted to similar action in order to accomplish a similar end.

Present day business is conducted with little regard for intervening state or other lines. If a district court may, in a proceeding under Section 77, issue an injunction

[27] See remarks of Senator Hastings, sponsor of the bill in the Senate (76 Cong. Rec., p. 4880). It is of some significance that in *Ex Parte Baldwin*, 291 U. S. 610 (1934), which involved the jurisdiction of a bankruptcy court in a proceeding under Section 77, the Court clearly indicated that ancillary proceedings, in aid of the primary court's administration of the estate, may be necessary (see pp. 614, 615).

against a creditor of the debtor *anywhere in the United States*, merely upon notice by mail, all creditors of the debtor must submit themselves to the jurisdiction of that court, although such creditors may be residents of New York and the bankruptcy proceedings may be pending in California, or else must assume the risk of court action adverse to their interests. If Congress had intended to impose such new and severe burdens upon banks and business houses, and to create a court with a jurisdiction so unlike that of other courts, it seems clear that language would have been used which would leave no doubt as to the legislative intent.

Conclusion.

The judgments of the Circuit Court of Appeals should be reversed, and the causes remanded to the District Court with instructions to vacate the injunctional order of November 22, 1933 (R. 104), and so much of subdivision (8) of the order of June 7, 1933 (R. 7) as denies to petitioners the right to dispose of the pledged collateral held by them pursuant to the terms of the Debtor's notes.

Respectfully submitted,

January, 1935.

ISAAC H. MAYER,
CARL MEYER,
DAVID F. ROSENTHAL,
HERBERT A. FRIEDLICH,
Counsel for Petitioner, Continental Illinois National Bank and Trust Company of Chicago.

HENRY ROOT STERN,
PAUL D. MILLER,
LEDLIE A. DEBOW,
Counsel for Petitioner, The Chase National Bank of the City of New York.

T. M. PIERCE,
MILTON R. STAHL,
S. MAYNER WALLACE,
Counsel for Petitioner, Mississippi Valley Trust Company.

THEODORE S. CHAPMAN,
HAL C. BANGS,
PERRY M. CHADWICK,
Counsel for Petitioner, Harris Trust and Savings Bank.

EDWIN W. SIMS,
FRANKLIN J. STRANSKY,
JAMES P. CAREY, JR.,
Counsel for Petitioner, The New York Trust Company.

APPENDIX.

Statutes Involved.

Section 2(15) of the Bankruptcy Act (Act of July 1, 1898, c. 541, §2(15), 30 Stat. 545, as amended; U. S. C. A., Title 11, §11(15)):

> "The courts of bankruptcy * * * are hereby invested, within their respective territorial limits as established, on July 1, 1898, or as they may be thereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, to * * * (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this Act."

Section 57(h) of the Bankruptcy Act (Act of July 1, 1898, c. 541, §57(h), 30 Stat. 560, as amended; U. S. C. A., Title 11, §93(h)):

> "(h) The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance."

Section 67(d) of the Bankruptcy Act (Act of July 1, 1898, c. 541, §67(d), 30 Stat. 564, as amended by Act of June 25, 1910, c. 412, §12, 36 Stat. 842; U. S. C. A., Title 11, §107(d)):

> "(d) Liens given or accepted in good faith and not in contemplation of or in fraud upon the provi-

sions of this Act, and for a present consideration, * * * shall, to the extent of such present consideration only, not be affected by anything herein."

Section 77(a) of the Bankruptcy Act (Act of March 3, 1933, c. 204, §1, 47 Stat. 1474; U. S. C. A., Title 11, §205(a)):

"(a) Any railroad corporation may file a petition stating that the railroad corporation is insolvent or unable to meet its debts as they mature, and that it desires to effect a plan of reorganization. * * * Upon the filing of such a petition, the judge shall enter an order either approving it as properly filed under this section, if satisfied that such petition complies with this section and has been filed in good faith, or dismissing it if not so satisfied. If the petition is so approved, the court in which such order approving the petition is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located. * * *"

Section 77(l) of the Bankruptcy Act (Act of March 3, 1933, c. 204, §1, 47 Stat. 1474; U. S. C. A., Title 11, §205(l)):

"(l) In addition to the provisions of section 11 of this Act for the staying of pending suits against the debtor, such suits shall be further stayed until after final decree (and)[29] the judge may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree."

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[29] The word "and" in parentheses was omitted from the statute and is supplied as required to make sense.

Section 77(n) of the Bankruptcy Act (Act of March 3, 1933, c. 204, §1, 47 Stat. 1474; U. S. C. A., Title 11, §205(n)):

> "(n) In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and his property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."

Section 74(m) of the Bankruptcy Act (Act of March 3, 1933, c. 204, §1, 47 Stat. 1467, as amended June 7, 1934, c. 424, §2, 48 Stat. 922, 923; U. S. C. A., Title 11, §202(m)):

> "(m) The filing of a debtor's petition or answer seeking relief under this section shall subject the debtor and his property, wherever located, to the exclusive jurisdiction of the court in which the order approving the petition or answer as provided in subdivision (a) is filed, and this shall include property of the debtor in the possession of a trustee under a trust deed or a mortgage, or a receiver, custodian or other officer of any court in a pending cause, irrespective of the date of appointment of such receiver or other officer, or the date of the institution of such proceedings: Provided, That it shall not affect any proceeding in any court in which a final decree has been entered * * *."

Section 74(n) of the Bankruptcy Act (Act of March 3, 1933, c. 204, §1, 47 Stat. 1467; U. S. C. A., Title 11, §202(n)):

> "(n) In addition to the provisions of section 11 of this Act for the staying of pending suits, the court, on such notice and on such terms, if any, as it deems fair and equitable, may enjoin secured creditors who may be affected by the extension proposal from proceeding in any court for the enforcement of their claims until the extension has been confirmed or denied by the court."

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1934.

IN THE MATTER

of

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.

Nos. 479 and 480

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*, Respondents.

Nos. 481 and 482

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*, Respondents.

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HARRIS TRUST AND SAVINGS BANK, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*, Respondents.

Nos. 487 and 488

THE NEW YORK TRUST COMPANY, Petitioner, *vs.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*, Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF FOR PETITIONERS.

ISAAC H. MAYER,
CARL MEYER,
DAVID F. ROSENTHAL,
HERBERT A. FRIEDLICH,
Counsel for Petitioner, Continental Illinois National Bank and Trust Company of Chicago.

T. M. PIERCE,
MILTON R. STAHL,
S. MAYNER WALLACE,
Counsel for Petitioner, Mississippi Valley Trust Company.

EDWIN W. SIMS,
FRANKLIN J. STRANSKY,
JAMES P. CAREY, JR.,
Counsel for Petitioner, The New York Trust Company.

HENRY ROOT STERN,
PAUL D. MILLER,
LEDLIE A. DEBOW,
Counsel for Petitioner, The Chase National Bank of the City of New York.

THEODORE S. CHAPMAN,
HAL C. BANGS,
PERRY M. CHADWICK,
Counsel for Petitioner, Harris Trust and Savings Bank.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

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IN THE

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ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF FOR PETITIONERS.

The difficulties in the way of sustaining the decision of the court below are forcibly illustrated by the contradictory theories advanced by the various respondents in an effort to support the decision.

Respondents have filed three briefs, one on behalf of several Protective Committees, headed by the Committee for the Debtor's First and Refunding Bonds (hereinafter referred to as the First and Refunding Group), one on behalf of the General Mortgage Committee and one on behalf of the Debtor's Trustees. In substance, the first

of these represents the view of the junior lien holders; the second, the view of the senior lien holders; and the third, the view of the stockholders. In each brief, Section 77 is interpreted according to the special interests of the particular group represented. Respondents are united in purpose only by a common desire that the rights of petitioners be curtailed for the benefit of other creditors and the Debtor itself.

The following comments apply generally to all briefs filed by respondents:

1. None of said briefs answers, or attempts to answer, a main contention of petitioners that (a) a bankruptcy court in an ordinary bankruptcy proceeding is without jurisdiction to enjoin the sale of validly pledged collateral because, for one reason, the jurisdiction of such court extends only to property which is actually or constructively in the possession of the bankrupt at the time of the filing of the petition (save in specified cases not here material), and (b) there is nothing in Section 77 which would, contrary to the general bankruptcy rule, give to a bankruptcy court in a proceeding under that Section jurisdiction over validly pledged property which was not in the possession of the debtor when it filed its petition under Section 77.

2. Although conceding in effect that the injunction could not have been issued in an ordinary bankruptcy proceeding (First and Refunding Br., pp. 32, 35), none of respondents *finds any provision in Section 77 which authorizes the issuance of the injunction in the instant cases.* The First and Refunding Group and the General Mortgage Committee predicate the court's authority to issue the injunction upon the alleged necessity (from a practical

viewpoint) of such action in order to permit the consummation of a plan of reorganization. In the Trustees' brief, the authority to issue the injunction is based upon the theory that the approval of a petition filed under Section 77 crystalizes the status of all creditors as of the time of the filing of the petition, so that thereafter no individual creditor is at liberty to enforce an independent remedy for the realization of its rights.

The arguments of all the respondents are based upon two premises:

1. That Section 77 *guarantees* the ultimate reorganization of the Debtor, and, therefore, that the District Court had authority to issue any order necessary to insure the carrying out of a plan; and

2. That the sale of the collateral would prevent a reorganization.

It may be plainly demonstrated, petitioners submit, that these premises are unfounded.

I.

Section 77 does not *guarantee* the ultimate reorganization of the Debtor and consequently the District Court does not possess authority to issue any order necessary to *insure* a plan of reorganization.

Section 77 does not *guarantee* a plan of reorganization for every debtor who files a petition under that section. All that that Section provides is an *opportunity* to propose a plan.

A reorganization may be effected only if a plan is proposed which will, among other things, be acceptable to and approved by two-thirds in interest of each class of credi-

tors or will provide adequate protection for the interests of dissenting classes. If such a plan cannot for any reason be put into effect, then the proceedings under Section 77 must be dismissed. (See Section 77 (c) (7), and Section 77 (k); Appendix to R. F. C. brief, pp. 95, 104-105). If, because of events occurring prior to filing its petition under Section 77, the debtor's position has become such that a plan acceptable to the requisite number of its creditors cannot be proposed, then the debtor is relegated to its *status quo ante* the petition. Section 77 makes no provision for coercing certain creditors to the end that, by virtue of the relinquishment by such creditors of rights legitimately acquired and unaffected by bankruptcy, the other creditors, the debtor and its stockholders may obtain, in whole or in part, the same advantages they would have had if the debtor had not, prior to bankruptcy, created such rights.

Section 2 (15) of the Bankruptcy Act permits orders which are "necessary for the enforcement of the provisions" of the Act, but respondents point to no *provision* of Section 77 which the injunction enforces. Before any question of "enforcement" of a "provision" for reorganization is involved, it must first be shown that Section 77 provides—that is to say *requires*—that a reorganization must be consummated. Unless the Act makes the approval of a plan—perhaps even of a particular plan—mandatory (and, of course, it does not), there is no provision for a plan of reorganization to be enforced.

Respondents invoke Section 2 (15) not to enforce any "provision" of Section 77, but to enforce the asserted "*general purposes*" of Section 77. Clearly, petitioners submit, authority to issue the injunction is not thus to be *implied* in the face of (1) specific provisions in the Bankruptcy Act, not repealed by Section 77, which have been uniformly

construed not to disturb the rights of a pledgee to close out his collateral; (2) lack of power in a bankruptcy court, not in any wise remedied by Section 77, to deal with property not in the actual or constructive possession of the bankrupt; (3) provisions in Section 77 which negative an intent to confer the asserted authority; and (4) grave doubts as to the constitutionality of the asserted authority.

II.

A sale of the pledged collateral would not prevent a reorganization.

All respondents contend that the injunction was necessary if a plan is to be consummated, but they differ sharply as to the reasons for the alleged necessity. These differences arise chiefly because of a sharp conflict of views as to the legal effect of a sale by petitioners of the collateral.

The First and Refunding Group and the Trustees assume that a purchaser of the pledged bonds from petitioners would become the holder thereof and possess the same rights with respect thereto against the Rock Island and the mortgaged property as one who had acquired similar bonds prior to the filing of the Debtor's petition under Section 77. Since the pledged bonds are of a face amount in excess of the indebtedness owing to petitioners by the Debtor, these respondents assert that a sale of the pledged bonds would increase the outstanding indebtedness of the Debtor. On this basis, they assert that an injunction is necessary because (1) an increase in the indebtedness of the Debtor might interfere with the acceptability of any plan by the various creditors and stockholders, and (2) if there were no injunction, there would be insuperable

mechanical difficulties in working out a plan of reorganization arising from the "continuing uncertainty" as to the amount and classes of creditors to be taken care of in any plan.

The General Mortgage Committee, on the other hand, argue that the effect of the filing of the Debtor's petition under Section 77 was instantly to extinguish any personal obligation of the Debtor upon the pledged bonds, with the result that such bonds became in effect mere evidences of a *pro tanto* interest in the mortgaged property underlying those bonds, and they argue that, if the collateral is sold, the purchasers will acquire no claim thereon against the Debtor but will acquire merely a right to share in the property mortgaged to secure such bonds.[1] On this theory, there would, of course, be no increase in the "indebtedness" of the Debtor upon a sale of the bonds. The General Mortgage Committee, however, argue that the injunction was necessary to avoid mechanical difficulties in working out a plan. They assert that a sale of the collateral would create a new class of creditors—a class holding bonds which are secured by a lien on the mortgaged property but which carry with them no personal obligation of the Debtor —and that if sales are made from time to time, a plan could not be worked out, since the proponents thereof would never know the amount of new securities required to be set apart for such class.

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[1] The General Mortgage Committee argue that the pledged bonds are not now outstanding obligations of the Debtor in the face of payments, made after filing of the Debtor's petition and even subsequent to the injunction, of interest on the General Mortgage Bonds pledged to secure the First and Refunding Bonds. Petitioners, as pledgees of First and Refunding Bonds, received a proper *pro rata* share of this payment. (See First and Refunding Br., p. 22; R. 342.)

The legal premises upon which the argument of the General Mortgage Committee is based raise questions of vast importance in view of the exceedingly large amount of collateral loans made by petitioners and banks generally which are secured by the mortgaged bonds of the borrowers themselves. If bankruptcy of a borrower *ipso facto* destroys said bonds as personal obligations of the borrower, it is obvious that after the bankruptcy of the borrower such bonds will be less valuable than like bonds carrying the borrower's personal obligation, and that, as a practical matter, the pledgee might, therefore, have difficulty in obtaining a purchaser therefor. Indeed, it is not going too far to state that a decision by this Court that purchasers of the Rock Island bonds, held by petitioners, would not acquire a personal claim on such bonds against the Rock Island would have a more far-reaching and harmful effect upon petitioners, and many other banks similarly situated, than a decision sustaining the injunction.

Petitioners deny the legal premise upon which the argument of the General Mortgage Committee is based, and assert that, notwithstanding the filing of the Debtor's petition under Section 77, petitioners are able (apart from the injunction) to transfer the Rock Island bonds held by them, so that the purchasers thereof would hold such bonds with precisely the same rights therein as one who had acquired like bonds prior to the filing of the Debtor's petition under Section 77. The argument upon which this view is based is set forth in the Appendix to this brief (pp. 23-50, *infra*).

Petitioners contend, however, that it is not necessary for this Court to determine the precise legal rights which purchasers of the pledged bonds would acquire. Petitioners contend that, whatever may be the legal incidents of

the pledged bonds held by them, they are entitled to sell them pursuant to the pledge agreements. Furthermore, petitioners contend that on either the theory of the First and Refunding Group and the Trustees as to the legal effect of a sale of the pledged bonds, or the theory of the General Mortgage Committee, there is no basis for respondents' contention that a sale of the collateral would prevent a reorganization.

The chief reasons advanced by the First and Refunding Group, and the sole reason advanced by the General Mortgage Committee, as to the necessity for the injunction, are purely mechanical ones—*i. e.*, they assert that an injunction is necessary in order to prevent *mechanical difficulties in working out a plan.* They argue as follows: In order to work out a plan, it is necessary to know the amount and classes of the outstanding indebtedness; if there were no injunction, the pledgees could at any time sell the pledged collateral; at each sale the class of creditors consisting of the holders of the bonds sold would be increased [the General Mortgage Committee contend that a sale of the pledged collateral would create a *new class* of creditors and that each subsequent sale would increase such class]; it would be impossible from a mechanical viewpoint to work out a plan if the amount and classes of outstanding creditors were subject to "unpredictable shifts" and if there were "continuing uncertainty" as to when the collateral would be sold.

With all deference to learned counsel, petitioners respectfully submit that these so-called mechanical difficulties are shadows without substance and afford no basis for saying that the injunction was necessary.

No plan was before the District Court when the injunction was sought, and none has since been formulated. If respondents had not secured the injunction, it is likely that petitioners would long since have sold all the collateral—an act which would have completely and finally eliminated any problem of "unpredictable shifts" or "continuing uncertainty" as to the size of classes.

A short answer to respondents' argument is that many railroads have in the past been reorganized in equity proceedings without resort to an injunction against the sale of pledged collateral. Although there may be some mechanical differences between a railroad reorganization under Section 77 and the familiar railroad reorganization in an equity proceeding, it is clear that at some stage in the latter proceeding, as well as in the former, the interested parties must know with exactness the precise amount of outstanding claims and classes of creditors. In view of the well established custom of railroads to secure funds by the pledge of their own secured obligations, it is only reasonable to assume that in some of these equity reorganizations there were outstanding collateral loans of the character involved in the instant cases; certainly, in most of such equity reorganizations, there were outstanding collateral trust indentures similar to those in the instant case. (See R. 66.)[2]

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[2] Petitioners have no basis for determining the accuracy of the statement made by the First and Refunding Group (Br., p. 16) that, according to a statistical survey made by them—not made available to petitioners—the ten major railroad systems which have been reorganized since 1910, had no substantial collateral loans outstanding. This statement is clearly inaccurate if it is intended to apply to collateral trust indentures. (See, for example, the facts with respect to the collateral involved in the St. Paul receivership, Moody's, Steam Railroads, 1926, p. 1108 (par. 5), and pp. 1109-1110 (pars. 10 and 11).)

Most of respondents' asserted mechanical difficulties arise from an unwillingness to recognize that the pledged bonds of the Rock Island held by petitioners are presently outstanding obligations of the Rock Island, subject only to the Debtor's right to redeem by paying the indebtedness (see pp. 25-47, *infra*). Being presently outstanding, there is no uncertainty as to the *total amount* of the now outstanding bonds, and, unless the Debtor pays the indebtedness owing to petitioners, the First and Refunding Bonds of the Debtor held by petitioners must be provided for in any plan of reorganization to precisely the same extent (certainly where, as here, the present market value of the pledged bonds is less than the amount of the indebtedness owing) as similar bonds held by the public generally. Accordingly, a sale of the First and Refunding Bonds held by the petitioners would not increase the amount of such bonds outstanding or the amount of such bonds to be taken care of by the issuance of new securities. The size of the *class* being presently fixed, a sale of the pledged bonds would not increase it, but would merely substitute one holder for another.

Moreover, there are no mechanical difficulties which necessitate this injunction, even if it be assumed that a sale of the pledged bonds would increase the class of creditors holding such bonds.

In an ordinary bankruptcy liquidation proceeding it is necessary *ultimately* to know the precise amount of outstanding claims of all classes. But this fact has never required an injunction against the sale of pledged bonds of the bankrupt. The claim of a pledgee holding pledged bonds of a bankrupt in an ordinary bankruptcy proceeding cannot be allowed until the value of his security has been determined. The pledgee may, if he chooses, deter-

mine this value by selling the collateral. But if he does not, the court may direct the determination of such value "by agreement, arbitration, compromise, or litigation" (Sec. 57 (h); U. S. C. A., Title 11, Sec. 93 (h)). The requisite certainty as to the total outstanding claims of all classes is insured by the fixing of a time within which all claims must be filed.

The situation would be no different in a proceeding under Section 77 even on the assumption, the most favorable to respondents, that the proof of secured claims in a proceeding under Section 77 should be governed by the bankruptcy rather than the equity rule.[3] Section 77 (c) (5) provides (Appendix to R. F. C. Br., p. 95) that the court shall—

> "* * * determine a reasonable time within which the claims and interests of creditors and stockholders may be filed or evidenced and after which no such claim or interest may participate in any plan except on order for cause shown."

In the instant cases, the District Court, on January 23, 1934, entered an order classifying creditors and stockholders, but expressly refrained from fixing a time for the filing of claims, except as to a few classes of claims not here material. (Appendix to R. F. C. Br., pp. 133, 140). Ultimately, at the proper time for formulating a plan, the District Court will fix a date prior to which these petitioners and all other claimants must file their claims, and the neces-

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[3] As is pointed out in the Appendix, *infra*, pp. 23-50, petitioners contend that inasmuch as Section 77 provides for the reorganization of the debtor rather than the liquidation of the debtor's estate, the equity rule is more properly applicable to a proceeding under that Section. If such equity rule does govern, the respondents are, *a fortiori*, in error, since the First and Refunding Bonds held by the petitioners are outstanding to the same extent as like bonds of the same issue.

sary effect of that action will be to force petitioners to determine the value of their collateral (which is necessary before petitioners can ascertain the amount of their *unsecured claims*) either by a sale thereof according to the pledge agreements, or in one of the other ways provided by Section 57 (h). But until that time arrives, there is no necessity (from the mechanical point of view of working out a plan of reorganization) for enjoining a sale.

If respondents want to know the precise amount of outstanding claims, they should ask the District Court to fix a period for the filing of claims. If and when that time arrives (which will not be until there is some necessity for knowing exactly the amounts and classes of claims), and the petitioners have not sold their collateral or the Debtor's Trustees have not redeemed it, there will be time enough to consider whether—in order to know the precise amount of the outstanding claims—the Court can require petitioners to determine the value of the collateral they hold by a sale thereof, or otherwise. Until a period has been fixed for the filing of claims no one interested in a plan is in a position to know, or demand to know, with precise certainty the amount and classes of outstanding claims.

In other words, the mechanical requirement of certainty as to the amount of claims can *never* justify a *restraint* upon the pledgees' right of sale, although, conceivably, the *forcing* of such a sale may be ultimately necessary in order *to fix the value of petitioners' unsecured claims.*

Moreover, the alleged mechanical difficulties conjured by respondents are all predicated upon the preparation and working out of a plan. When the Debtor's petition for an injunction was filed, no plan was in process of preparation. No plan is yet in preparation, and less than two months ago the Debtor's Trustees advised the Interstate Com-

merce Commission that there was no immediate likelihood of any plan being formulated. (Appendix to R. F. C. Br., pp. 167-173). Whatever effect, if any, a sale of the collateral might have upon the mechanics of working out a plan in process of preparation, such considerations *are wholly irrelevant when no plan is in process of formulation.*

The First and Refunding Group supplement their argument with respect to the alleged mechanical difficulties by asserting that if petitioners are permitted to sell the collateral the amount and character of new securities to be issued will be affected. They argue (First and Refunding Br., pp. 12-13):

> "* * * if the R. F. C. and the Banks retain their collateral, not more than $17,784,877 in securities need be provided * * * to retire these loans and take up the $54,711,465 of collateral. * * * But, if the R. F. C. and the Banks finally sell all their collateral, * * * $54,711,465 in lower grade securities must be provided in the plan of reorganization in place of $17,784,877 in cash or securities."

This argument assumes, without basis, that in any plan of reorganization the petitioners and the R. F. C. will receive only cash or new securities in an amount determined by the face amount of their claims ($17,784,877). This assumption is obviously not well founded where, as here, the value of the pledged bonds is less than the face amount of petitioners' claims. If the present value of the pledged collateral is less than the amount of petitioners' claims secured thereby, it is clear that petitioners must receive, for each pledged bond, the same amount of new securities as do any other holders of bonds of the same issue, and, *in addition,* must receive securities, or be otherwise compensated for, the value of their *unsecured claims.*

But, even if it be assumed that the amount and character of the new securities to be issued under any plan will be different if the pledged collateral is sold from what they will be if the pledged collateral is not sold, it does not follow that a sale of the collateral will prevent the working out of *a plan;* it means only that a sale of the collateral may require *a different sort of plan* than would be required if the collateral were not sold. But, as made clear in petitioners' main brief (pp. 58-60), Section 77 does not guarantee any plan, let alone any *particular kind of plan,* and does not provide for any plan which will require secured creditors to abandon their favored position for the benefit of unsecured creditors or the Debtor's stockholders.

In addition to the arguments above set forth, the First and Refunding Group contend that a sale of the pledged collateral would so magnify the capitalization of the Rock Island that it would "disastrously affect the acceptability to the creditors and the stockholders whose assent thereto is necessary." (First and Refunding Br., p. 11). This is a pure assertion, unsupported by any facts. It is predicated primarily on the assertion (First and Refunding Br., p. 7) that a decision that the petitioners could not be enjoined from selling the pledged collateral would also determine that the trustees of three bond issues of the Debtor would have the right to sell $145,749,050 face amount of bonds and stock of the Debtor's System pledged with such trustees. This latter assertion is likewise without foundation. It is based solely on the allegation in Mr. Beebe's affidavit (R. 66-67) that:

> "In certain events described in the Indenture under which the aforesaid Trustees are acting, such Trustees are given the right to sell such collateral."

What such "certain events" are does not appear. Whether a decision that the petitioners could sell their collateral would determine the right of the trustees under the Debtor's mortgages to sell the collateral pledged with them depends, of course, upon the terms and conditions of the trust indentures. *But the record does not disclose such provisions.* If the Court is to speculate as to what such provisions might be, petitioners point out that it is very unlikely that collateral pledged under a trust indenture to secure a bond issue running for eighteen years (see R. 65) would be held under terms ordinarily applicable to a pledge of collateral to secure a short term bank loan.

Finally, even assuming that the trustees under the Debtor's Mortgages can and will sell the collateral pledged with them if there is no injunction against petitioners, there is nothing before the Court which warrants the statement that a plan can be worked out if the Debtor's capitalization is $400,000,000 but cannot be worked out if such capitalization is increased by $50,000,000 or more.

Apart from the foregoing, it is apparent that a sale of the collateral has little bearing upon a reorganization.

A sale of the collateral would not dispose of or affect the railroad properties which secure the bonds of which the collateral consists. After such a sale, those properties would still belong to and be in the possession of the Debtor and/or its Trustees, and would be just as available for operation and inclusion in a plan of reorganization as before such a sale. If it be assumed that these properties would be subject to a greater amount of claims after such a sale, the only result would be to require the additional claims to be taken into account in the plan—the plan could still be consummated if approved. It might not be so favorable to

other creditors, or it might be a different plan from that which would have been put into effect if no sale had taken place, but a plan of reorganization would not be prevented by such sale. So long as the Debtor has assets, some kind of reorganization is presumably possible and practicable.

To argue that any particular act would make a reorganization *unacceptable* is to indulge in mere conjecture in the absence of a polling of creditors and stockholders, or at least some evidence of facts tending to show that a plan will be proposed and approved if such act is enjoined. But assuming that any plan which could be proposed after the sale would be unacceptable to the interested parties, Section 77 does not *insure* an acceptable—or any—plan, and the true cause of the unacceptability must be the financial condition generally of the Debtor. It seems as unfair to require petitioners to give up their right of sale as it would be to ask other creditors to relinquish a part of their claims, although this waiver of a part of other creditors' claims might tend to bring about the approval of an otherwise unacceptable plan.

Respondents concede that secured creditors cannot be restrained from selling third party (as distinguished from the Debtor's own) obligations. Assume that the collateral consisted of valuable bonds or stocks of a railroad, or any other corporation, having no connection with the Debtor—securities having no readily realizable market value but great potential and intrinsic value. These securities, respondents argue, could be sold and yet their value, in proportion to remaining assets of the Debtor and its capitalization and indebtedness, might be so great as to make any plan of reorganization impracticable after the sale. Such a sale would actually take assets out of the estate; a sale of the Debtor's own obligations would have no effect upon

the assets of the estate. Yet respondents say the first sale should not be restrained and the latter should be. Surely their argument cannot be based on the premise that the first sale (taking assets out of the estate) would not prevent a reorganization while the latter sale (leaving assets unaffected) would prevent a reorganization. In fact, the argument is and must be that a sale of the Debtor's own mortgage obligations would require the proposal of a plan, which other creditors would find more unfavorable to them than the plan which might have been presented if the sale had not taken place. Therefore, the sale must be enjoined, not because it would prevent a plan, but in order to obtain the approval of a plan by other creditors.

III.

The contention of the Debtor's Trustees as to the construction of Section 77.

Of the various theories advanced by the respondents, the only one which attempts logically to justify the injunction on the basis of interpretation of Section 77, is that advanced by the Debtor's Trustees. The difficulty with the Trustees' theory, however, is that it is founded on what the stockholders of a financially embarrassed railroad wish Section 77 provided rather than on what that Section actually does provide.

The Trustees contend that the effect of the approval of a petition filed under Section 77 is instantly to freeze into immobility all the claims, secured and unsecured, against the Debtor—an immobility which can only be altered or relieved pursuant to a plan of reorganization worked out

under the supervision of the Interstate Commerce Commission. They assert (Trustees' Br., p. 7):

> "* * * From the moment the petition is approved * * *, the Act impounds the rights of all, so to speak, until the reorganization plan is consummated, to the end that through a readjustment, modification, or alteration of the rights of the creditors, secured or unsecured, and of the stockholders, the capital structure and the physical properties of a financially embarrassed railway company may be so reorganized, under the supervision of the Interstate Commerce Commission, as to enable the corporation to continue to function and adequately to serve the public."

That the Trustees' construction of Section 77 should be one wholly at variance with anything suggested by the respondent Committees or by the court below and, indeed, at variance with the provisions of Section 77 itself, is not surprising in view of the fact that such construction is squarely predicted upon the assumptions (1) that Section 77 "is not essentially a bankruptcy act" (Trustees' Br., p. 1), and (2) that "the interpretation of Section 77 cannot be predicated upon cognate provisions of the Bankruptcy Act; for the purposes of the Acts are diametrically opposed to each other." (Trustees' Br., p. 9).

The error of this premise, apart from the fact that it would destroy the constitutional foundation of Section 77, is apparent when it is considered that—

> 1. Section 77 was enacted as an integral part of the Bankruptcy Act (Section 73; U. S. C. A., Title 11, Sec. 201).
>
> 2. The purpose of Section 77 was to bring railroads "under the bankruptcy jurisdiction of the

Federal court" (H. Rept. No. 1897, 72d Cong., 2d Sess., p. 16).

3. Section 77 (n) provides that in a proceeding under Section 77, and consistent with the provisions thereof, "the jurisdiction and powers of the court • • • shall be the same" as in an ordinary voluntary bankruptcy proceeding.

The Trustees' Brief is so replete with statements not warranted, either expressly or by implication, by anything in Section 77, or otherwise, that it would be impracticable to reply to all of them. To illustrate, the Trustees assert (Br., p. 11) that all creditors, including holders of securities, must "defer individual action for the realization of their rights, and await the formulation of a plan." If this were not so, the Trustees assert, the creditors "by their own act, could eliminate themselves from the reorganization plan, and thus defeat the very purpose of the amendment." But plainly, the elimination of any creditors, by wholly extra-legal action in accord with a conceded contract right, would tend not to prevent but, rather, to facilitate a reorganization.

Similarly, the Trustees assert (Br., p. 12) that the equity of the Debtor in the pledged securities "is property of the debtor", and as such property *must* be provided for in a plan of reorganization. Petitioners have no objection to the reorganization of the Debtor's "equity", if any, in the pledged collateral; they object to an attempt to reorganize the pledged collateral itself—*i. e.*, property not in the possession of the court and not part of the Debtor's estate.

The Trustees' theory of construction is predicated chiefly upon one of the definitive provisions of the statute—

subdivision (b) (1)—which provides (Appendix to R. F. C. Br., p. 93) that—

> "A plan of reorganization within the meaning of this section (1) shall include a proposal to modify or alter the rights of creditors generally, or of any class of them, secured or unsecured * * *."

The Trustees interpret this provision to mean that every plan of reorganization under Section 77 *must* modify or alter the rights of all secured creditors. Plainly, this construction is unwarranted, since otherwise it would be impossible to work out any plan of reorganization without modifying the rights of *all* secured creditors, including those holding underlying securities so well secured that equity would require that such securities be left undisturbed. Furthermore, this very subdivision contemplates by its express terms that the rights of "any class"—not every class—of secured creditors may be modified or altered. Even if we should give to the word "shall" the distorted emphasis ascribed to it by the Trustees, still all that the statute would provide is that a plan shall include a *proposal* to modify, etc. Clearly, the question whether the *proposal* should be made a *provision* of the plan is one left to the determination of the Interstate Commerce Commission and the courts.

A short and sufficient answer to the Trustees' theory of construction is that the words "secured creditors", as used in various places in Section 77, must, in so far as is consistent with the provisions of Section 77, be construed with respect to the rights of such creditors, and the jurisdiction and powers of a bankruptcy court with respect to such creditors, as such jurisdiction and powers have been determined by the courts in ordinary bankruptcy proceed-

ings, unless some provision in Section 77 can be pointed to which *requires* a different result. No such provision is referred to in the Trustees' brief.

Respectfully submitted,

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ISAAC H. MAYER,
CARL MEYER,
DAVID F. ROSENTHAL,
HERBERT A. FRIEDLICH,
Counsel for Petitioner, Continental Illinois National Bank and Trust Company of Chicago.

T. M. PIERCE,
MILTON R. STAHL,
S. MAYNER WALLACE,
Counsel for Petitioner, Mississippi Valley Trust Company.

EDWIN W. SIMS,
FRANKLIN J. STRANSKY,
JAMES P. CAREY, JR.,
Counsel for Petitioner, The New York Trust Company.

HENRY ROOT STERN,
PAUL D. MILLER,
LEDLIE A. DEBOW,
Counsel for Petitioner, The Chase National Bank of the City of New York.

THEODORE S. CHAPMAN,
HAL C. BANGS,
PERRY M. CHADWICK,
Counsel for Petitioner, Harris Trust and Savings Bank.

APPENDIX.

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PETITIONERS' CONTENTION THAT A PURCHASER OF THE DEBTOR'S FIRST AND REFUNDING BONDS HELD BY PETITIONERS WOULD HAVE THE SAME RIGHTS WITH RESPECT THERETO AGAINST THE DEBTOR AS ONE WHO ACQUIRED LIKE BONDS PRIOR TO THE FILING OF THE DEBTOR'S PETITION UNDER SECTION 77.

The injunction against the sale by petitioners of their collateral was sought and obtained in the District Court on the theory that a sale of such collateral (consisting of secured obligations of the Debtor in a face amount substantially in excess of the Debtor's notes held by petitioners) would increase the outstanding indebtedness of the Debtor and thus dilute the interests of other bondholders and creditors. (See R. 40.) This theory was based on the assumption that a purchaser of the pledged bonds held by petitioners would have the same rights with respect to such bonds against the Debtor and its property as any holder of like bonds which were acquired prior to the filing of the Debtor's petition under Section 77.

In the Circuit Court of Appeals one of the respondent Committees, the Protective Committee for the Debtor's General Mortgage Bonds, made the contention that the effect of the filing of the Debtor's petition under Section 77 was instantly to extinguish any personal obligation of the Debtor upon the pledged bonds, with the result that such bonds became in effect mere evidences of a *pro tanto* interest in the mortgaged property underlying those bonds; and they contended further that if the pledged bonds were

thereafter sold, the purchasers would acquire no claim against the Debtor upon the pledged bonds, but would acquire merely a right to share in the mortgaged property securing such bonds. That Committee makes the same contention in this Court.

If that contention were sound, it would mean that by the mere act of the Debtor in filing its petition under Section 77 the value of the pledged bonds would be greatly reduced, since, obviously, the sale price of "bonds" carrying no personal obligation of the Debtor would be substantially smaller than that of bonds carrying the personal obligation of the Debtor.

The General Mortgage Committee concedes (General Mortgage Br., p. 34) that if the pledged bonds were sold *prior to the institution of proceedings under Section 77,* the purchasers thereof would acquire a valid title thereto and rights therein against the Debtor and its property precisely the same as those of any other holder of bonds of the same issue. And it is clear that it was the intention of the parties that petitioners should, upon default of the Debtor, have the right to sell the pledged bonds—*i. e.,* the right to convey an absolute title thereto, including a claim against the Debtor for the face amount of the bonds.

The pledge by a corporation of its own bonds is an established method of corporate financing, and the courts have uniformly held that neither insolvency nor bankruptcy interferes with the right of a pledgee to sell such pledged bonds upon a default by the pledgor. Since the decision of this Court in *Jerome* v. *McCarter,* 94 U. S. 734 (1876), and the decision in *In re Ironclad Mfg. Co.,* 192 Fed. 318 (C. C. A. 2d, 1912), the business world generally has

assumed as a matter of course that the right to sell such pledged bonds after bankruptcy of the pledgor connoted the power to vest in the purchaser thereof the same rights with respect to such bonds as are possessed by one who acquired such bonds prior to such bankruptcy.

The General Mortgage Committee have, however, submitted an exhaustive brief in which they attempt to establish a contrary conclusion. Although petitioners believe that the question of what rights would vest in a purchaser of the pledged bonds from petitioners at a sale subsequent to the filing of the Debtor's petition under Section 77 is not involved in the instant cases, for reasons set forth in their main brief, and in their reply brief, petitioners have deemed it advisable to prepare this supplemental memorandum in answer to the contention of the General Mortgage Committee that petitioners cannot now sell the pledged bonds so as to convey an absolute title thereto.

For the purpose of this memorandum petitioners shall assume that *all* the pledged bonds held by them are First and Refunding Bonds of the Debtor.

I.

The First and Refunding Bonds pledged by the Debtor to Petitioners were upon the pledge thereof and are now valid and subsisting obligations of the Debtor.

In contending that if a pledgee of mortgage bonds of a corporate pledgor, after the institution of bankruptcy proceedings with respect to such pledgor, sells those bonds in accordance with the terms of the pledge agreement, the purchaser is not entitled to prove upon such bonds for their face amount, the General Mortgage Committee have,

it is submitted, confused the law of corporations and the law of pledge. Relying on the admitted fact that the rights of a pledgee are of a qualified character, the General Mortgage Committee contend that the bond, so long as it is in the hands of the pledgee, must necessarily be an imperfect obligation, and that since, under Section 63 (a) of the Bankruptcy Act, claims, to be provable, must be fixed and absolutely owing at the time of the filing of the petition, a sale subsequent to such time could not perfect the obligation and make it provable.

In so arguing, the General Mortgage Committee have overlooked the fact that in such a situation there are two obligations which must be treated separately—the obligation of the corporation as maker of the note incidental to which the pledge agreement was executed, and the obligation of the corporation as obligor on the mortgage bond. Respondents apparently assume that any claim asserted against the corporation on the mortgage bond is a claim asserted by the pledgee *as pledgee thereof.* This, petitioners will show herein, is an erroneous assumption. When the pledgee of that bond asserts any right against the corporate obligor on the bond, he does so *as the absolute obligee on that bond* without regard to the fact that the corporation is also obligated to him on a note, and that the bond is pledged as security for the indebtedness represented by such note. When, on the other hand, that pledgee asserts against the corporation any right on the note, he does so wholly apart and distinct from any right which he may have against the same corporation on the bond.

In so far as the rights of the obligee (the pledgee) on the corporation's mortgage bond are concerned, those rights are absolute and are not qualified by the fact that

he holds the bond as collateral securing that same corporation's note. True, the obligee's right to the *proceeds* derived from the enforcement of the obligation represented by the bond are necessarily qualified by the law of pledge, and if the proceeds derived from the enforcement of the bond are in excess of the amount of the corporation's obligation represented by the note, the obligee will be entitled to such *proceeds* only up to the face amount of the note. Similarly, the right of the payee of the note to enforce that note against the debtor is likewise unqualified.

True, the law of pledge controls the amount which the payee of the note will ultimately be entitled to retain from the proceeds derived from enforcing both the obligation represented by the note and the obligation represented by the bond securing such note. The operation of that law, however, affects only the ultimate distribution of the *proceeds,* and in no way affects the existence of valid separate and unqualified corporate obligations on both the note and the bond. In so far as the payee of the note, *as such payee,* asserts any right against the corporation, he asserts it only with respect to the indebtedness represented by that note; in so far as that same individual asserts any right against the corporation on the latter's mortgage bond, he asserts it solely as obligee on that bond without reference to the fact that at the same time he holds that bond as collateral securing another obligation of the same corporation.

The intervention of bankruptcy does not affect these two distinct obligations, and hence proof on the bonds should be permitted. True, so long as both the note and the bonds are in the hands of the pledgee, any amount received as dividends in excess of the face amount of the

note is held for the bankrupt pledgor's estate. The law of pledge imposes this limitation; it requires no greater. To bar proof on the bonds altogether is unwarranted by any provision of the Bankruptcy Act, or by any rule of corporate or pledge law.[4]

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[4] In an ordinary bankruptcy proceeding the creditor of the bankrupt before proving a secured claim is required, unless he surrenders the security, to realize on the security or have it appraised, and to deduct the sale price or the appraised value from the face amount of the secured indebtedness.

In an equity proceeding, on the other hand, a creditor of the insolvent need not account for the collateral securing the insolvent's obligation to him, the only limitation on his right being that the amount ultimately retained by him from the proceeds derived both from the collateral and proof of the secured obligation may not exceed the face amount of the obligation secured.

Although Section 77 was grafted upon the Bankruptcy Act, it provides for a procedure which in general is far more analogous to the equity proceeding than it is to the ordinary bankruptcy proceeding. Section 77 contemplates a reorganization of the debtor, not a liquidation of the debtor's estate. Heretofore, railroad reorganizations could be effected only through the medium of equity receivership proceedings. Petitioners submit that the rule followed in those proceedings should, therefore, be followed in proceedings under Section 77, and that such rule should not be abandoned in favor of the rule prevailing in *ordinary* bankruptcy proceedings which are fundamentally opposed both in purpose and procedure to a reorganization proceeding.

Furthermore, it is significant that petitioners made their loans to the Debtor herein at a time when there was no possibility of that Debtor's being reorganized under the Bankruptcy Act, and clearly at a time when they were entitled to believe that they were amply secured in that they could in any reorganization proceeding affecting the Debtor prove upon the claims represented by the Debtor's notes without regard to the collateral securing such notes.

Petitioners submit, therefore, that any attempt to apply the rule prevailing in ordinary bankruptcy proceedings to the instant situation would be unwarranted. Even if, however, the rules prevailing in ordinary bankruptcy proceedings were applicable to a proceeding under Section 77, it would follow only that in proving upon the notes, petitioners would be required to deduct the proceeds received as dividends through proof on the bonds; it would not follow at all that proof could not be had upon the independent obligations represented by the bonds.

Sale of the bonds, either before or after bankruptcy, in no way affects their provable character. Upon a sale of the pledged bonds, the limitation that dividends received through proof on the bonds in excess of the amount of the note are held for the bankrupt pledgor's estate is removed. This necessarily follows, since that limitation was imposed not by any rule of bankruptcy but by the law of pledge. The sale under the terms of the pledge agreement removes the pledged character of the bonds, and the limitations imposed by pledge law are consequently removed.

If it be contended that the recognition of such rights in the purchaser makes possible a variation in the total claims which may be filed against the debtor's estate and the dividends which may be payable on account of the bonds and the notes, the answer is that even in an ordinary bankruptcy proceeding the Bankruptcy Act does not prohibit that result. In every situation in which a creditor of a bankrupt holds security that result obtains. A secured creditor can never in an ordinary bankruptcy proceeding prove upon the full claim secured without reference to his security. He must, before proving, either sell his collateral or have it appraised, and deduct the sale price or the appraised value from his claim, or surrender the collateral. The claim filed and the total dividends payable, will necessarily vary according to which of these alternatives the secured creditor elects. Any such election must of necessity occur after the filing of the petition. Yet it has never been suggested that the fact of that variation makes claims unprovable. The claim presented is on a "fixed obligation * * * absolutely owing" at the time the petition was filed.

Admittedly, the above analysis is correct only if the bonds held by petitioners are valid and subsisting obligations of the Debtor. An examination of cases dealing with the pledge of a corporation's own mortgage bonds leaves no doubt that such is the case. A transaction in which a corporation pledges its own mortgage bonds as security for a present loan is recognized as a legitimate form of corporate finance. See Hatch, "*A Form of Depression Finance—Corporations Pledging Their Own Bonds*", 47 H. L. Rev. 1093.

Whether such procedure results in an "issue" of those bonds is, of course, a question of corporate law and is, therefore, governed by the law of the domicile of the pledgor corporation. The Debtor being an Illinois corporation, the answer to that question in the instant cases depends upon Illinois law.

In *Peacock* v. *Phillips*, 93 N. E. 415 (Ill., 1910), the court indicated that corporate bonds which

> "* * * are issued for the purpose of raising funds for the corporation and are intended to be thrown upon the market and to pass from hand to hand."

are validly issued obligations of the pledgor corporation. The court said (p. 417):

> " * * * The mortgage or trust deed secures the holders of the bonds, and they can be enforced by such holders for the full face value, regardless of equities. To permit equitable defenses to be interposed would practically destroy such methods of raising money, and the corporation is properly estopped to deny its liability."

Subsequent to the decision of the *Peacock* case, the Supreme Court of Minnesota in *Gilbert* v. *Fosston Mfg. Co.*, 218 N. W. 451 (Minn., 1928) had occasion to decide this question with respect to a situation governed by the law of Illinois. Relying upon the *Peacock* case, the Minnesota court said (p. 452):

> "That [the decision in the *Peacock* case] is controlling and disposes of this case. It makes no difference that the bonds were not negotiable. They were corporate obligations of the kind referred to in Peacock *v.* Phillips, and that is enough. That case follows the rule of the federal courts."

Although there seem to be no other Illinois cases on this point, it should be noted that in so far as provisions of the Illinois Constitution or Corporation Law are concerned, the situation is fully as favorable as in the other states in which it has been held that a pledge of such bonds by a corporate debtor constitutes an issue thereof. The doctrine appears to be accepted generally, except in Missouri. In some states there is no constitutional or statutory provision relating to the right of a corporation of that state to issue bonds. In other states there is a provision, either constitutional or statutory, prohibiting the issuing of stock or bonds except for money or property actually received, or labor done. Illinois falls in the latter group, Article XI, Section 13, of the Illinois Constitution providing, in part, that:

> "No railroad corporation shall issue any stock or bonds, except for money, labor or property actually received, and applied to the purposes for which such corporation was created;"

Although this provision of the Illinois Constitution seems never to have been construed with reference to this question by Illinois courts, it was construed by the Supreme Court of California deciding a case governed by Illinois law. In *Illinois Trust & Savings Bank* v. *Pacific Ry. Co.*, 49 Pac. 197 (Cal., 1897), the court held that a pledge by an Illinois corporation of its authorized but previously unissued mortgage bonds constituted a valid issue of those bonds. The court said on this point (p. 201):

> "By the constitution of Illinois it is provided that no railroad corporation shall issue stock or bonds except for money, labor, or property actually received and applied to the purposes for which such corporation was created. The constitution of this state (article 12, §11) contains a similar provision, omitting the clause as to application of the money, labor, or property. Upon these provisions appellant contends that it had no power to pledge its own bonds as collateral security. When the bonds were so pledged, and money or other property was actually received in consequence of such use of them, it seems to us that in a just and natural sense the bonds were issued 'for' such money or property. They served the purpose designed by the company,—procured value for it."

Identical rulings have been made in various other states in whose constitutions or statutes there appears a provision substantially identical with that in Section 13 of the Illinois Constitution. Thus in *In re Waterloo Organ Co.*, 134 Fed. 345 (C. C. A. 2d, 1904), which involved such a provision in the Laws of New York, the court said (p. 346):

"Counsel for the trustee objected on the ground that there was no valid consideration for the issue of the bonds, and that, as they were issued as collateral security without a present consideration, they were not issued for their fair market value, and therefore the issue was *ultra vires* and void.

"The referee has discussed the questions raised herein, and the authorities bearing thereon, and held 'that it was in the power of the corporation to pledge these bonds to the bank; that the bank is a lawful holder thereof, and, having proved them, they should be allowed in this proceeding'; and the court below has affirmed the order of the referee allowing the claim on said bonds. We concur in said decision."

Similarly, in *In re Goldville Mfg. Co.*, 118 Fed. 892 (D. S. C., 1902), aff. sub. nom. *William Firth Co.* v. *South Carolina Loan & Trust Co.*, 122 Fed. 569 (C. C. A. 4th, 1903), which involved such a provision in the South Carolina Constitution, the court said (p. 896):

"The fifth objection is that these bonds are invalid under section 10, art. 9, of the constitution of South Carolina, which provides that 'stock or bonds shall not be issued by any corporation save for labor done, or money or property actually received or subscribed; and all fictitious increase of stock and indebtedness shall be void.' This constitutional prohibition was evidently intended to provide against any issue of stock or bonds without consideration, * * * and can have no application here, where the bonds were issued for the purpose of paying for machinery already contracted for, and which actually went into the building. * * * It was a present consideration, and the company would not have secured the machinery except upon the assumption of the obligation to pay for the same."

In *Western Supply & Mfg. Co.* v. *United States & Mexican Trust Co.*, 92 S. W. 986 (Tex. Civ. App., 1906), with respect to such a provision appearing in the Texas Constitution, the court said (p. 987):

> "The Constitution provides that 'no corporation shall issue stock or bonds, except for money paid, labor done, or property actually received and all fictitious increase of stock or indebtedness shall be void.'
>
> "* * * The railway company had power under the Constitution to issue its bonds, and we think the authority is broad enough to embrace a pledge, as well as a sale of its bonds. When the bonds were pledged and money or property actually received as a result of such pledge, the bonds were in effect 'issued for' such money, and property."

And in *Atlantic Trust Co.* v. *Woodbridge Canal & Irrigation Co.*, 79 Fed. 842 (C. C., N. D. Cal., 1897), speaking with reference to like provisions appearing in the California Constitution and Code, the court said (p. 847):

> "The expression 'issue', in the constitution and Code, is certainly broad enough to cover a pledge as well as a sale of bonds. In the contemplation of law, bonds pledged by a corporation are just as much issued as when they are sold."

As to the general right of a corporation to effect a valid issue of its mortgage bonds through a pledge thereof, see, in addition to the foregoing cases: *Westinghouse Electric & Mfg. Co.* v. *Brooklyn R. T. Co.*, 288 Fed. 221 (S. D. N. Y., 1923); *Gilchrist Transp. Co.* v. *Phenix Ins. Co.*, 170 Fed. 279 (C. C. A. 6th, 1909); *Turner* v. *Metropolitan Trust Co.*, 207 Fed. 495 (C. C. A. 9th, 1913); *Equitable Trust Co.* v.

Great Shoshone & T. F. W. P. Co., 228 Fed. 516 (S. D. Idaho, 1915); *Worth* v. *Marshall Field & Co.*, 240 Fed. 395 (C. C. A. 4th, 1917).

Missouri appears to be alone (see Hatch, *ibid*, 47 Harv. L. R. 1093, 1117) in the view stated in *Dibert* v. *D'Arcy*, 154 S. W. 1116 (Mo., 1913), in which it was held that bonds so pledged were not "issued" and that

> "* * * in so far as these bonds constitute a personal liability of the Hardwood Export Company, they have no force whatever otherwise than as an evidence of the pledge of an interest in the lands mortgaged to secure them" (p. 1127).

The Missouri rule was the basis of the decision in *Mississippi Valley Trust Co.* v. *Railway Steel Spring Co.*, 258 Fed. 346 (C. C. A. 8th, 1919), which case has been extensively relied upon by the General Mortgage Committee. The rule of the *Mississippi Valley* case has no application in jurisdictions other than Missouri.

Questions as to the *effect* of the issue of a corporate bond by a pledge thereof may be raised in the following situations:

> 1. Where the pledgee of the bond seeks to enforce it against the corporate obligor while that corporation remains solvent;
>
> 2. Where a purchaser of the bond from the pledgee seeks to enforce it against the corporate obligor while that corporation remains solvent;
>
> 3. Where the pledgee of the bond seeks to prove a claim upon the bond against the estate of the insolvent obligor;
>
> 4. Where a purchaser of the bond from the pledgee, who purchased it before the insolvency of

the corporate obligor, seeks to prove a claim upon it against the estate of the insolvent obligor; and

5. Where a purchaser of a bond from the pledgee, who purchased it after the insolvency of the corporate obligor, seeks to prove a claim upon it against the estate of the insolvent obligor.

1. In the first of these situations, it is clear that the right of the pledgee to enforce a pledged bond is the same as that of any other holder of the corporation's bonds. "There is no reason why there should not be accorded to the holder of a corporate bond, who holds such bond 'by way of pledge from the issuing corporation for the corporation's own debt,' every right of a bondholder consistent with the right of the corporation to redeem." VI Fletcher, Cyc. Corp. (Per. ed., 1931), §2725. Thus, if interest payments upon the bonds become due while they are held in pledge, the pledgee-obligee is entitled to receive the interest; if the bonds mature during the life of the pledge, he is entitled to receive payment of the principal. *Smith* v. *Pillsbury,* 178 Pac. 719 (Cal. App., 1918). Likewise, if an action is brought to foreclose the mortgage securing the bonds while they are held in pledge, the pledgee-obligee is entitled to participate in full with the holders of other bonds in the proceeds available for distribution. *Duncomb* v. *N. Y., H. & N. R. R. Co.,* 84 N. Y. 190 (1881); *Peck* v. *N. Y. & N. J. Ry. Co,* 85 N. Y. 246 (1881).

True, in each of these situations the pledgee-obligee would be required to deal with such payments in accordance with the terms of the pledge agreement, and would be required to return to the pledgor any of such proceeds in excess of the amount of the principal indebtedness. *He does, however, have the right to enforce the obligation,*

clearly indicating that the pledged bond is a valid and enforceable obligation of the corporate obligor, *even in the hands of the pledgee.* The fact that the proceeds received from such enforcement must be held subject to the terms of the pledge arises entirely through the operation of the law of pledge. It in no way indicates that the right of the pledgee-obligee of bonds is in any way qualified as a matter of corporate law.

2. With respect to the second situation, it is equally clear that a purchaser of such bonds may enforce those bonds in their full amount. That right was upheld in *Gilbert* v. *Fosston Mfg. Co.*, 218 N. W. 451 (Minn., 1928), *supra*, where the court said (p. 452):

> "The doctrine of Dibert *v.* D'Arcy, in practical result, *disables a pledgee from selling the bonds of his debtor which have been pledged with him, although he has been given that right by a contract legally unobjectionable.* That power, absolute and unconditioned as it is ordinarily, *contemplates a sale and nothing less, and that good title shall be vested in the purchaser.* But under the rule of Dibert *v.* D'Arcy, there can be no power of sale in the real sense, but only the power, although the form of a sale be resorted to, of a bare assignment by the creditor of his right to use the collateral for the purpose of collecting his debt. Therefore, while that rule may achieve equity and avoid harsh results in given cases, it does seem to thwart the plain purpose of a lawful contract and to be in opposition to current lawful practices and purposes of business. Be that as it may, here it is the Illinois rule of Peacock *v.* Phillips that must control. *It follows that, by their sale as a pledge, appellant Baker got an unimpeach-*

> *able title to the bonds and may enforce them accordingly.''* (Italics ours.[5])

In *Farmers' Loan & Trust Co.* v. *Toledo & S. H. R. Co.*, 54 Fed. 759 (C. C. A. 6th, 1893), the court reached the same conclusion, and in *Gilchrist Transp. Co.* v. *Phenix Ins. Co.*, 170 Fed. 279 (C. C. A. 6th, 1909) the same court phrased the rule as follows:

> "If the debt be not paid, the pledgee may sell the bonds on giving notice to the pledgor, and the purchaser will take the mortgage as well as the bonds, and *may proceed to enforce the one by foreclosure and the other by an action at law, or he may do both.''*

See also *The Morris Canal and Banking Company* v. *Fisher*, 9 N. J. Eq. (1 Stockton) 667 (1855); *The Morris Canal and Banking Company* v. *Lewis*, 12 N. J. Eq. 323 (1858); *Hunt* v. *Memphis Gaslight Co.*, 31 S. W. 1006 (Tenn., 1895); *Rawlings* v. *New Memphis Gaslight Co.*, 60 S. W. 206 (Tenn., 1900); and *Medford* v. *Myrick*, 147 S. W. 876 (Tex. Civ. App., 1912), writ of error denied 150 S. W. xix.

These cases necessarily involve a holding that the bonds, when in the hands of the pledgee before sale to the purchaser, were valid and enforceable obligations of the pledgor-obligor. To assert that they indicate that such bonds are enforceable only in the hands of the purchaser would involve the proposition that by a mere sale the pledgee could make that an obligation of the pledgor which had not previously been such, whereas it is obvious that no one but the issuing corporation itself could create a valid obligation of that corporation. It is true

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[5] All italics used in quotations herein are supplied unless otherwise indicated.

that in the hands of a purchaser the bonds are free of that equity—the right to redeem—which adhered to them in the hands of the pledgee, but this is not to say that the character of the obligation represented by the bonds is in any way changed. It means rather that that equity in favor of the pledgor which previously attached to the bonds themselves has been transferred to the amount received upon their sale and hence the bonds themselves are thereafter free from that equity imposed, not by the law of corporations, but by the law of pledge.

3. In the third situation, in which the pledgee-obligee seeks to prove upon the bonds against the estate of the insolvent pledgor-obligor corporation, the right to prove is sustained by *Jerome* v. *McCarter,* 94 U. S. 734 (1876), when the Court said (p. 739):

> "There are some [bonds], it is true, that are still held in pledge; but the pledgees have a clear right to use them, *either by sale or by collection, until the full amount of the debts due from the mortgagors is satisfied.* • • • If, therefore, the holders of the the McCarter bonds, who hold them as collaterals, are allowed to hold them only for the sums for which they have been pledged, the bonds may, and probably will, prove an insufficient security for the debts actually due from the obligors to the holders. • • • If, at the sale, the mortgaged property shall bring more than sufficient to pay the debts for which the bonds are held in hypothecation, the proceeds of the sale will be under the control of the Circuit Court, and it will take care that a proper distribution is made. And if this were not so, the pledgees would hold any excess they might receive in trust for other incumbrancers, or for the appellants • • •."

In *Butterfield* v. *Woodman*, 223 Fed. 956 (C. C. A. 1st, 1915) it was stated that the assignee of the notes and the pledged bonds of the insolvent corporation was entitled to prove on both the notes and the bonds.

On the basis of the previous analysis herein made, these findings are clearly correct. The notes and the bonds are each independently valid obligations of the insolvent corporation and proof on both of them should be permitted. True, the right of the pledgee, as the holder of both the note and the bond, to participate in the dividends resulting from the proof of both obligations should be limited to such amount as will make him whole. But this is a limitation arising from the law of pledge and that limitation requires not that proof on one or the other of the obligations should be denied but only that the amount ultimately retained from the proceeds received from proving on both the obligations should not exceed the amount of the original indebtedness.

An opposite conclusion was reached in *Hitner* v. *Diamond State Steel Co.*, 176 Fed. 384 (C. C. Del., 1910), in which it was held that the pledgee could not prove in the receivership of the insolvent pledgor upon the pledged bonds held by it. The approach of the court, which led it into error, was that of splitting the bond into its promissory and security aspects, and then analogizing it in so far as its promissory aspect was concerned with an unsecured note pledged to secure a note.

It is true that it has frequently been held that the holder of an unsecured note pledged to secure another note of the maker cannot prove upon the pledged note against the insolvent estate of the pledgor. Assuming, for the sake of argument only, the correctness of such decisions,

it is improper to analogize that situation with one in which the pledgee holds secured bonds of the debtor in pledge. The courts in holding such pledged notes unprovable have based their decisions on the ground that a transaction involving the pledge of another note of the maker *is not a legitimate security arrangement*—that the giving of the second note is a vain thing—that it is a mere multiplication of the evidences of a single debt—*that it cannot be properly considered as the giving of collateral security.* And the courts have in every instance distinguished such situation from that in which the securing obligation is a mortgage bond of the corporate pledgor. *Union Nat. Bank* v. *People's Savings & Trust Co.*, 28 F. (2d) 326 (C. C. A. 3rd, 1928); *People* v. *E. Remington & Sons*, 54 Hun (N. Y.) 480 (Sup. Ct., G. T., 4th Dept., 1899); *In re Matthews, Inc.-In re Knickerbocker Trust Co.*, 188 Fed. 445 (S. D. N. Y., 1911).

The force of the distinction is best illustrated by the cases of *In re Waddell-Entz Co.*, 35 Atl. 257 (Conn., 1896), and *Mercer* v. *Steil*, 117 Atl. 689 (Conn., 1922), both decided by the highest court of Connecticut. The first of these involved the two-note situation and the court, after denying proof on the pledged note, stated that proof should be denied

> "unless such additional promises are themselves secured by a lien on property, * * *. Under such circumstances, they may be treated as collateral security, so far as is necessary to obtain the benefit of the lien or obligation." (p. 258).

Mortgage bonds pledged to secure a note were involved in the second case, and the court held that the bonds in the hands of a purchaser from the pledgee-obligee were provable in their face amount, pointing out that the bonds were

collateral security within the definition laid down in the *Waddell-Entz* case.

In *Peacock* v. *Phillips*, 93 N. E. 415 (Ill., 1910), *supra*, in which case, after holding that under Illinois law the holder of an individual's pledged note and mortgage could not claim for the face amount of the mortgage debt, the court stated that the same rule did not apply in the case of pledged corporate bonds, saying (p. 417):

> "The mortgage or trust deed secures the holders of the bonds, and they can be enforced by such holders for the full face value, regardless of equities."

The pledging of a mortgage bond to secure a loan is, as these cases recognize (see also the many cases cited in petitioners' main brief, pp. 17-20), a perfectly legitimate form of corporate financing. It is erroneous to analogize the superficially similar but, realistically considered, different situations.

The approach of the court in the *Hitner* case is justified in a situation such as that involved in *Mississippi Valley Trust Co.* v. *Railway Steel Spring Co.*, 258 Fed. 346 (C. C. A. 8th, 1919), *supra*. The basis of that decision was that the bonds were, under the law of Missouri, the corporation's domicile, not validly issued when pledged, and *hence that the pledge created no promissory obligation*. Where, as in the instant cases or in the *Hitner* case, it is established that pledged bonds are validly issued, to hold that their promissory aspect is eliminated by the institution of bankruptcy or receivership proceedings is manifestly inconsistent. Such bonds are as validly issued as are other bonds of the debtor sold outright; they constitute single commitments,

having a dual character, *i. e.*, promissory and security. In neither aspect is their character qualified. That they are valid obligations implies that there is a promissory obligee as well as an obligor. That obligee must be the pledgee. Neither bankruptcy nor insolvency of the obligor can *ipso facto* change that relationship, and destroy the pledgor's obligation upon the bond.

In the *Hitner* case the court broke up the single contract evidenced by the bond into its promissory and security aspects and then, mistakenly applying the analogy of the two-note cases, found that in its promissory aspect the bond was only a qualified obligation, ineffective after insolvency. Thus to break up an essentially unitary bond and then qualify it in one of its essential aspects—a construction never within the contemplation of the parties—and that on the basis of cases in which the courts were careful to distinguish the mortgage bond situation, is obviously unsound.

The untenable character of the court's position in the *Hitner* case is clearly established by the admission of the court in that case *that a purchaser of the pledged bonds would acquire the right to enforce the same against the pledgor.* The court said (p. 398):

> "It was argued that if the banks could sell and transfer the first mortgage bonds held by them as collateral to a third person, conferring upon the purchaser a right to participate not only in the proceeds of the mortgaged property, but in the general assets, the banks themselves without such sale and transfer would have the same right to participate in both funds. But this is a fallacy. *The bonds in the hands of the purchaser would represent unconditional indebtedness of the steel company and liability to pay its amount,* whether they were purchased for

more or less than their face value. But while remaining in the possession of the banks purely as collateral security they do not as between the steel company and the banks represent such an indebtedness. It was further contended that if the banks for the purpose of realizing on their collateral had exposed the first mortgage bonds for sale and become bona fide purchasers, they could, equally with a third person purchasing the same, have resorted to both funds. *This is true,* subject to the qualification that the net purchase price would operate as a payment on account of the original indebtedness for which the bonds had been delivered as collateral. Upon such purchase the bonds would *ipso facto* cease to be held by the banks as collateral, and would *represent actual unconditional indebtedness and liability on the part of the steel company;* the consideration for the change being the part payment of the original indebtedness resulting from the purchase of the bonds by the banks, such part payment, other things being equal, increasing the chance of payment in full of the original indebtedness through the application of dividends from the general assets."

As previously pointed out, there can logically be no difference between the rights of a pledgee of bonds and a purchaser from the pledgee to prove against the insolvent estate of the obligor on those bonds. The only distinction between the two situations is that in the former there is a limitation on the total amount of dividends received upon the combined claims which can be ultimately appropriated by the pledgee.

4. In the fourth situation, in which a purchaser of corporate bonds from the pledgee who has purchased said

bonds before bankruptcy seeks to prove upon such bonds against the bankrupt corporate obligor, the right to prove is squarely established by *Turner* v. *Metropolitan Trust Co.*, 207 Fed. 495 (C. C. A. 9th, 1913), in which the court said (pp. 499-500):

> "The attempt to make a distinction between the rule which governs contracts of pledge, where the pledgor prefers to pledge its own mortgage bonds as collateral, and that which governs such contracts, where the pledgor pledges the bonds of another corporation, is not well founded. *The contract measures the rights of the parties; and where the expressed intention is that in case of foreclosure the bonds deposited may be sold as existing securities, and the pledgee is given the right to become the purchaser, why should there be any less good title conveyed to such purchaser than if he were selling the bonds of another corporation?*
>
> "* * * A corporation which has issued its bonds frequently pledges them as collateral security for a debt. *Nor is it unusual that in suits for foreclosure the bonds pledged are offered at public sale and are purchased by the pledgee, who is entitled to the full face value of the bonds.*"

In a similar situation in receivership, the right to prove was upheld in *Atlantic Trust Co.* v. *Woodbridge Canal & Irrigation Co.*, 86 Fed. 975 (C. C., N. D. Cal., 1897).

5. In the fifth situation, that in which a purchaser of a bond from the pledgee, who has purchased after the bankruptcy of the corporate obligor, seeks to prove on the bond against the bankrupt corporate-obligor—*i. e.*, the situation presented in the instant cases—the right to prove is estab-

lished by *Jerome* v. *McCarter*, 94 U. S. 734 (1876), and *In re Ironclad Mfg. Co.*, 192 Fed. 318 (C. C. A. 2d, 1912).

In the *Jerome* case, this Court said (p. 739):

> "There is some proof that, when the company became bankrupt (Aug. 28, 1872), some of the bonds were held as collaterals for loans made to the company smaller in amount than the bonds pledged. But the bonds were subsequently sold by the pledgees, *and the present holders hold them by absolute right. The position that the pledgees could not sell the pledge after the adjudication in bankruptcy, is quite untenable.* It is sustained by nothing in the Bankrupt Act. The bonds were negotiable instruments. They passed by delivery, and even were there no expressed stipulation in the contracts of pledge, that the pledgee might sell on default of the pledgor, such a right is presumable from the nature of the transaction. *Certainly the Bankrupt Act has taken away no right from a pledgee secured to him by his contract.*"

The contrary language in *In re Battle Island Paper Co.*, 259 Fed. 921 (N. D. N. Y., 1919), is founded upon the same erroneous analysis which characterizes the *Hitner* case, *supra*, p. 40.

In similar situations arising in receivership proceedings, the principle set forth in *Jerome* v. *McCarter* has been frequently asserted. *Mercer* v. *Steil*, 117 Atl. 689 (Conn., 1922), *supra*; *Guaranty Trust Co.* v. *Galveston City R. Co.*, 87 Fed. 813 (C. C. A. 5th, 1898); *Fidelity Insurance, Trust & Safe-Deposit Co.* v. *Roanoke Iron Co.*, 81 Fed. 439 (C. C., W. D. Va., 1896); *Morris & Whitehead* v. *East Side Ry. Co.*, 104 Fed. 409 (C. C. A. 9th, 1900); *Miller* v. *American Bank & Trust Co.*, 100 S. E. 864 (W. Va., 1919); and

Rogers Brown & Co. v. *Tindel Morris Co.*, 271 Fed. 475 (E. D. Pa., 1921). In the last of these cases, the court correctly stated the governing principle when it said (p. 476):

> "In its concrete form, applied to the facts of this case, the question is: May a debtor pledge his own mortgage bond as collateral for his debt? The question has been authoritatively answered in the affirmative. Turner *v.* Metropolitan Trust Co., 207 Fed. 495, 125 C. C. A. 157. Having the right to receive and hold such a pledge, with the power to sell, *the right to exercise the power follows.* Jerome *v.* McCarter, 94 U. S. 734, 24 L. Ed. 136."

From the foregoing, petitioners submit that the First and Refunding Bonds of the Debtor held by them were valid and subsisting obligations of the Debtor from the moment of their pledge and were, therefore, fixed obligations absolutely owing at the time of the filing of the petition under Section 77. The filing of that petition did not, and a sale of the bonds will not, in any way change their character, and hence claims on those bonds should be provable equally with all other debts of the Debtor. It follows, therefore, that there is no merit to the contention of the General Mortgage Committee that the petitioners in the instant cases should be enjoined from selling the Debtor's mortgage bonds which they hold as collateral on the ground that to permit such sale would be to allow the creation of new claims against the Debtor after the filing of the petition under Section 77.

II.

Even if the First and Refunding Bonds pledged by the Debtor would not constitute provable claims in an ordinary bankruptcy proceeding, such bonds nevertheless constitute provable claims under Section 77.

Assuming, for argument, that the position taken in Point I, *supra*, is incorrect, and that the pledge by the Debtor in the instant cases of its own mortgage bonds to petitioners did not create perfected obligations of the Debtor, it does not follow that such pledge did not create claims provable under Section 77.

Even if under Section 63(a) of the Bankruptcy Act a claim to be provable in an ordinary bankruptcy proceeding must be a fixed liability absolutely owing, in the strictest sense of that term, at the time the petition is filed, petitioners submit that such limitation can have no effect in a proceeding under Section 77. Section 77(b) provides (Appendix to R. F. C. brief, p. 93) that:

> "The term 'creditors' shall, except as otherwise specifically provided in this section, include, for all purposes of this section and of the reorganization plan, its acceptance and confirmation, all holders of claims, interests, or securities of whatever character against the debtor or its property, including claim for future rent, *whether or not such claims, interests, or securities would otherwise constitute provable claims under this Act.*"

Petitioners contend that this language explicitly negatives the applicability of Section 63(a) to a proceeding under Section 77. Furthermore, it makes clear that the

holders of any securities of the debtor, whatever the character thereof, have provable claims against the debtor. And still further, this provision makes it clear that claims arising against the debtor after the petition under Section 77 is filed and during the period determined by the Act or the court for the filing of proofs of claim may be proved against the debtor.

It is naturally to be expected that a broader class of claims should be admitted to proof in a proceeding under Section 77 than in an ordinary bankruptcy proceeding. All the provisions of the Bankruptcy Act, as it existed before the enactment of Section 77, and the interpretation of those provisions, particularly those having to do with provable claims, were dictated by the fundamental consideration that, upon bankruptcy, the estate of the bankrupt became a trust fund to be liquidated for the benefit of creditors, and that claims had to be satisfied from that fund and that alone. Strict limitations upon the right to prove claims were therefore necessary. Under Section 77, on the other hand, no liquidation is contemplated; on the contrary, that Section looks to a continuation of the debtor's enterprise. The only change contemplated is a readjustment of the various equities in that enterprise. Accordingly, since the possibility of realization is not forever barred by a proceeding under Section 77, as is true in an ordinary bankruptcy proceeding, there is no necessity for as strict a limitation upon the character of claims which shall be entitled to participate in the redistribution of the equitable interests in the debtor's enterprise.

That this is so is indicated by the fact that, although in an ordinary bankruptcy proceeding claims which are not provable under Section 63(a) are not discharged, in a

proceeding under Section 77 every claim against the debtor, whether or not provable under Section 63(*a*), may be discharged. (See Section 77(h)(7); Appendix to R. F. C. Br., p. 103). If Section 77 were to be construed as discharging the debtor from all his obligations whether the obligees on such obligations were permitted to participate in the redistribution of the equitable interests in the debtor's enterprise or not, the Section would encounter serious constitutional difficulties under the due process clause of the Fifth Amendment.

Petitioners submit, therefore, that when the Debtor's petition under Section 77 was filed, they as pledgees of the Debtor's First and Refunding Bonds had a provable claim thereon against the Debtor, and that there is no reason why petitioners cannot now sell the bonds held by them as collateral security and thereby vest in the purchasers of those bonds provable claims against the Debtor. Moreover, petitioners submit that whether or not *petitioners* have a provable claim on the pledged bonds, there is no valid reason why they should not be permitted, by the exercise of their express contract right, to sell the pledged First and Refunding Bonds with the result that a *purchaser* thereof would have a valid, provable claim thereon.

5

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

IN THE MATTER OF

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,

Debtor.

Nos. 479-488:

CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY, *et al.*,

Petitioners,

v.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,

Respondents.

Nos. 489-490:

RECONSTRUCTION FINANCE CORPORATION,

Petitioner,

v.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI.

ELIHU ROOT, Jr.,
31 Nassau Street, New York, N. Y.,
Attorney for Protective Committee for Debtor's First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds.

WILKIE BUSHBY,
JOSEPH SCHREIBER,
Of Counsel.

GEORGE W. WICKERSHAM,
14 Wall Street, New York, N. Y.,
Attorney for Protective Committee for Debtor's 10-Year 4½% Convertible Gold Bonds.

W. LLOYD KITCHEL,
EUGENE J. CONROY,
Of Counsel.

EDWARD C. [illegible],
15 [illegible] Street, New York, N. Y.,
Attorney for Protective Committee for the Consolidated First Mortgage [illegible] of the Burlington, Cedar Rapids & Northern Railway Company.

Pandick Press, Inc., 22 Thomas St., New York, U. S. A.

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Opinions Below.

No opinion was rendered by the District Court.

The opinion of the Circuit Court of Appeals (R., pp. 313-326) is reported in 72 F. (2d) 443.

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Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI.

This Court should deny the petitions for writs of certiorari because the decisions of the Courts below were clearly right and were based on facts found by the District Court and sustained by the Circuit Court of Appeals, which this Court does not review.

In order to make it appear that there are involved broad questions of general application which should be reviewed by this Court, the petitioners have distorted and enlarged one question involved in this case and have tried to make much of a procedural question and a constitutional question which are without substance.

The very statement in the petitions of the one question argued by all the petitioners is incorrect in that the decisions below were much more limited than the statement indicates. For example, the Reconstruction Finance Corporation makes it appear that the question is the broad one whether, in a proceeding under Section 77 of the Bankruptcy Act [11 U. S. C. A., §205], the Court generally may enjoin the sale by pledgees of collateral irrespective of its nature and amount and irrespective of the effect of the sale on the proceeding. The decisions below stand for no such general principle.

It was never contended in either of the Courts below that, in a proceeding under Section 77, the Court has general power to enjoin the sale of collateral by pledgees irrespective of the nature or amount of the collateral or the effect of the sale thereof upon the proceeding. It was contended below simply that in a proceeding under Section 77 the Court should examine the particular circumstances of each case,—that is, the amount and nature of the collateral, the size of the loan, and the particular capital and debt structure of the railroad system—to decide whether or not the sale or threat of sale of the collateral would, in effect, prevent a reorganization of that particular railroad system. The District Court made such an examination in this case and found that under the particular circumstances of this case the issuance of the injunction order was necessary to

preserve the sole purpose of the proceeding and, accordingly, issued the injunction.

The opinion of the Circuit Court of Appeals, affirming this decision, shows that the question was the narrow one of determining the necessity for the issuance of the injunction under the particular circumstances of this case (R., pp. 323-324):

> "The consummation of a fair and equitable plan of reorganization is the goal of the legislation. How could a plan of reorganization be perfected unless the courts restrained creditors and lienholders from proceeding in a manner which would defeat the consummation of said plan?
>
> "In the instant case some fifty-four millions of dollars of the debtor's and its subsidiaries' bonds were hypothecated with creditors whose claims were scarcely one-third that amount. To successfully reorganize, it is necessary to take care of the funded indebtedness amounting to approximately two hundred and eighty millions of dollars. If, in addition thereto, fifty-four million dollars of bonds were beyond the control of the court, **it would be quite impossible to proceed with any reorganization.**"

In view of the finding that the issuance of the injunction was necessary to permit a reorganization to be effected and to carry out the sole purpose of the proceeding under Section 77, the inevitable decision of the courts below was to issue and sustain the injunction. Any other decision would have nullified the purpose of Congress in enacting Section 77 for the reorganization of railroads. Obviously, this Court would reach no other result and a review of that question here would serve no real purpose.

There was no dissent below and no different view has been expressed in any other circuit. On the contrary, a District Court in the Ninth Circuit has issued an injunction on similar grounds in a proceeding under Section 77B [11 U. S. C. A. §207] (which is analogous to Section 77 but applicable to corporations other than railroads). *In re White Truck & Transfer Co.* (U. S. D. C., S. D., Cal.), Par. 3006, Commerce Clearing House Bankruptcy Service, p. 1107.

It should also be pointed out that the opinion of the Circuit Court of Appeals, as well as the findings contained in the order of the District Court, are very definite and clear and would leave no reader in doubt as to the limited nature of the question decided. Therefore there is no necessity for a review to clear up any ambiguity in the decision or limit its application.

The procedural question, argued only by three of the Banks, will be shown to have no important bearing. The constitutional question, argued only by the Banks, will be shown to be clearly "untenable," as held by the Circuit Court of Appeals.

I. A Statement of the Facts.

The petitioners are not in a position to dispute the findings of fact contained in the order of the District Court and affirmed by the Circuit Court of Appeals. For it was stipulated in open court that the petitioners might contest the merits of the application without waiving their special appearances (R., p. 119) and they submitted no evidence whatever (See Statement of Evidence, R., pp. 111, *et seq.*). Accordingly, for all purposes of any appeal and this peti-

tion, the facts set forth in the papers supporting the application in the District Court must be taken as undisputed.

The undisputed facts upon which the order was based are as follows:

On June 7, 1933, the Chicago, Rock Island and Pacific Railway Company initiated the proceeding under Section 77 of the Bankruptcy Act, in which a number of the subsidiary railroad companies of the System shortly thereafter joined, all for the sole purpose of effecting a plan of reorganization of the Rock Island System* (R., pp. 2-5, 26-28, 92-96).

At the time the reorganization proceeding began, the Debtor was indebted on relatively long-term promissory notes (most of them for 19 months) to the petitioners, Reconstruction Finance Corporation and the Banks, in the total sum of approximately $17,784,000, which was secured by mortgage bonds in the approximate aggregate face amount of $54,000,000. These bonds are either primary obligations of the principal Debtor, The Chicago, Rock Island & Pacific Railway Company, or obligations guaranteed by the principal Debtor, or obligations of System railroad companies which have also become Debtors in this same proceeding, or obligations of subsidiaries of the principal Debtor, and all are secured by lien upon some

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* That the sole purpose of this proceeding under Section 77 is to effect a reorganization of the Rock Island System is clear from a reading of the first sentence of Section 77, subdivision (a), and also from Clause 7 of subdivision (c) of Section 77, which provides that if a plan of reorganization is not proposed, accepted and confirmed within a reasonable time, the Court may dismiss the proceeding.

part of the Debtor Railroad System (R., pp. 12, 13, 14, 37, 38, 39, 67, 92, 93, 94).*

Under the provisions of the collateral notes held by the petitioners, the right of sale of the collateral existed at the time the application was made, and the danger of sale was imminent (R., p. 103).

It appeared that if this $54,000,000 total face amount of collateral were sold at the time, it would not yield the face amount of the notes, which was only one-third the amount of the collateral, namely, approximately $17,000,000, and might even result in a deficiency on the notes (R., p. 40). Consequently, following the sale there would be outstanding, in place of this $17,000,000 of claims, claims against the Debtor's estate totaling $54,000,000, *plus* any deficiency in the price brought by the collateral below $17,000,000. Thus, this particular indebtedness of the System would be more than tripled.

Furthermore, other creditors of the System held collateral, also consisting of obligations secured by mortgage liens upon the System or capital stock of other System companies, in the additional principal amount of $145,749,050 which would also become subject to sale because of the existence of events of sale in the indentures under which such collateral was held as security (R., p. 66). It was pointed out to the District Court that a decision that the Reconstruction Finance Corporation and the Banks should not be enjoined from selling the $54,000,000 face amount of collateral held by them, would also determine that such $145,749,050 of other collateral was free for sale,

* There is one minor exception,—among the collateral held by the Reconstruction Finance Corporation is the Rock Island's claim against the Railroad Credit Corporation in the face amount of approximately $1,400,000 (R., p. 38).

making a total of $200,000,000 of capital obligations of the System not now outstanding as primary debts but which would then be free for sale at a fraction of face value (R., p. 67).*

It further appeared that the total outstanding capitalization of the System was approximately $459,000,000, consisting of funded debt in the amount of $312,365,720, bank loans in the amount of $17,843,700, and stock in the amount of $128,909,211 (R., pp. 87-88). It was obvious that a plan of reorganization which would take care of a readjustment of an outstanding capitalization of $459,000,000 would not take care of an outstanding capitalization of from $600,000,000 to $650,000,000, which would result from sales of all or portions of the $200,000,000 total of capital obligations of the System held as collateral. Moreover, such sales might take place from time to time while attempts were being made to prepare a plan of reorganization, obtain assents thereto and put it into effect. Each sale would require a modification of the plan, result in a change in the number and classes of claimants theretofore fixed by the Court, whose assents must be obtained to the plan, and nullify any proceedings or assents on the plan theretofore taken.

No attack was made on the validity of the pledges of collateral or on the substantive rights of the pledgees or on the position to be accorded the pledgees in the plan of reor-

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* Notwithstanding that $141,739,050 of the above collateral secured the two bond issues represented by the Protective Committee for the Debtor's First and Refunding Bonds and Secured 4½% Gold Bonds, that Protective Committee supported the application for the injunction in the District Court, argued for sustaining the injunction on appeal in the Circuit Court of Appeals, and in this brief opposes these petitions for writs of certiorari (R., pp. 65-68).

ganization on account of their holding this large amount of collateral; and no relief was applied for which would do more than delay the use by the pledgees of their remedies. The point was that if no sale of the collateral took place the Rock Island, in order to take care of these claims, would not have to provide in the plan of reorganization cash or new A-1 securities in an amount in excess of the primary debt of $17,000,000 due to the pledgees. On the other hand, if the pledgees were to be permitted to sell their collateral, the Rock Island would have to provide in the plan for over $50,000,000 of new securities of various types to take care of these collateral securities which would then become outstanding primary debts. Also the trustees for bond issues of the Debtor holding similar collateral would be free to sell such collateral and the Rock Island would have to provide new securities of various types to take care of the $145,000,000 of such collateral not presently outstanding as primary debts. In addition sales would result in the mechanical obstacles to reorganization already mentioned.

Following oral argument and submission of briefs by the Banks, the R. F. C. and the other parties, the District Court found and determined, and so stated in its order, (a) that the facts set forth in the petition and the supporting affidavit were true, (b) that the sale of the collateral would in effect prevent the orderly preparation and consummation of a plan of reorganization under Section 77, which is the sole purpose of Section 77, (c) that it was necessary for the enforcement of the provisions of Section 77 that such sale be enjoined pending the preparation and consummation of a reorganization plan, and (d) that the Court had power under clause (15) of Section 2 of the Bankruptcy Act [11 U. S. C. A., §11 (15)] to make such orders,

in addition to those specifically provided for in the Act, as might be **necessary** for the enforcement of the Act (R., pp. 103, 104). Accordingly, the Court entered the injunction order pursuant to such findings (R., p. 104).

The findings of fact of the District Court could not be reversed on appeal unless determined to be clearly wrong. The Circuit Court of Appeals held not only that the findings of fact by the District Court were not clearly wrong, but that they were right, saying:

> "Upon the record before us we cannot say that the sale of the collateral by the pledgees will not defeat the purposes of Section 77. On the other hand, we agree with Judge Wilkerson that the facts called for an exercise of discretion on the part of the court in favor of the moving parties". (R., p. 324).

II. There Are No Questions Which Can Be Raised on this Record Which Warrant Review by this Court.

QUESTION 1. One question is argued by both petitions. But, as already stated, this question is not the broad one indicated by the petitioners as to the power of a Bankruptcy Court in a proceeding under Section 77, generally to enjoin the sale by pledgees of collateral of whatever nature and amount and under any circumstances. It is the limited one whether the Bankruptcy Court, in a proceeding under Section 77 for the reorganization of a railroad system, has the power to enjoin the sale of collateral consisting of capital obligations of the Debtor Railroad System in large amounts greatly exceeding the primary debt, where the Court finds under the particular circumstances of the case that the sale

of the collateral would prevent the preparation and carrying out of a plan of reorganization of the System, which is the sole purpose of the proceeding.

This question does not warrant review by this Court because the decisions of the Courts below were obviously correct. This Court will certainly not disturb the findings of fact made by the Courts below, namely, that in the particular circumstances of this case the issuance of the injunction was necessary to carry out the sole purpose of the proceeding, that is, reorganization of the Rock Island System. The necessity for the issuance of the injunction order to preserve the proceeding having been conclusively established, the only question remaining is whether the Court had power to issue the necessary order. But, the Court having found that the issuance of the order was **necessary** to prevent the proceeding from becoming abortive, the Court had the power to make the order under the express provisions of the Bankruptcy Act itself. For Section 2 of the Bankruptcy Act [11 U. S. C. A., §11] provides:

> "The courts of bankruptcy * * * are hereby invested, within their respective territorial limits as established on July 1, 1898, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, * * * to * * * (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be **necessary** for the enforcement of the provisions of this title."

However, the petitioners argue that notwithstanding the presence of this section in the Bankruptcy Act the Court had no power to make the injunction order, even though

necessary for the enforcement of the Act. Petitioners contend that prior to the enactment of Section 77, the weight of authority was that injunctions would not be issued against the sale of collateral by pledgees in an ordinary bankruptcy proceeding, and that such decisions, therefore, show that the power to issue such injunctions does not exist under Clause (15) of Section 2.

However, this contention completely loses sight of the fact that the power to issue an order pursuant to Clause (15) of Section 2 flows only from the **necessity** of issuing the order for the enforcement of the Bankruptcy Act. If there is no such necessity there is no such power. And the complete answer to petitioners' contention is that prior to the enactment of Section 77 as part of the Bankruptcy Act there was no necessity for enjoining the sale of collateral by pledgees in most cases in order to carry out the purposes of the ordinary bankruptcy proceeding. The primary purpose of bankruptcy proceedings prior to the enactment of Section 77 was to effect an **orderly liquidation** of the business and property of the bankrupt and an **equitable distribution** among its creditors. The sale of collateral by those holding notes of the bankrupt in the ordinary case would facilitate and hasten, rather than prevent, liquidation and distribution among the creditors according to their respective rights.

Since, in the usual case in ordinary bankruptcy, the sale of collateral would facilitate the carrying out of the purposes of the proceeding, there could be no necessity for enjoining the sale to preserve the purposes of the proceeding.

However, the sole purpose of a proceeding under the new Section 77 of the Bankruptcy Act is to **reorganize** the

Debtor, not to liquidate its business and property and make a distribution among its creditors. The difference between the purposes of an ordinary bankruptcy proceeding, *i. e.*, **liquidation and distribution**, and the purpose of a proceeding under Section 77, *i. e.*, **reorganization**, is well stated by the Circuit Court of Appeals in its decision in this case:

> "That which distinguishes this section [77] from the old act—the gist of the change evidenced by this amendment, that which makes it effective—is the provision which calls for a plan of reorganization. It calls not for a sale of assets and a discharge of the debtor, but for a plan of reorganization wherein the indebtedness and capital structure are changed (usually reduced) so that the debtor may live and the creditors will receive more than is obtainable upon a liquidation sale. The consummation of a fair and equitable plan of reorganization is the goal of the legislation" (R., p. 323).

The purposes of the two types of proceedings being so different, the Circuit Court of Appeals was plainly right in holding that any consideration of the cases under the old bankruptcy procedure was unnecessary. On this point the Circuit Court of Appeals said:

> "That the order may have been sustained under the Bankruptcy Act, before amendment under certain circumstances and as against creditors who occupy positions similar to some of the appellants is earnestly asserted. We are, however, for brevity's sake, avoiding a discussion of such questions because unnecessary. We desire to direct our attention to the statute as amended—to the condition that confronts us, not to a theoretical or supposititious question." (R., pp. 320, 321.)

Accordingly, the cases cited by the petitioners as representing the weight of authority against enjoining the sale of collateral consisting of obligations of the bankrupt in ordinary bankruptcy proceedings prior to the enactment of Section 77 are wholly inapplicable.*

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* The only case cited by petitioners in which an injunction against the sale of collateral consisting of obligations of the bankrupt was denied in an ordinary bankruptcy proceeding is *In re Ironclad Mfg. Co.*, 192 Fed. 318 (C. C. A. 2d, 1912).

The other cases cited by the petitioners as showing that Bankruptcy Courts, prior to the enactment of Section 77, did not enjoin the sale of collateral are readily disposed of as not even standing for that proposition.

Jerome v. *McCarter*, 94 U. S. 734, 739 (1876), was a case involving an equity receivership, and the sale of collateral discussed by the Court there took place before the equity receivership and during a prior bankruptcy, in which no injunction against the sale of the collateral had been applied for. The Court simply said that the sale having taken place the purchaser could prove on the bonds in the equity receivership.

In *Hiscock* v. *Varick Bank of New York*, 206 U. S. 28 (1907), the collateral consisted of obligations of a third party, and the sale having already taken place, no question of injunction was involved.

In *Turner* v. *Metropolitan Trust Co.*, 207 Fed. 495, 499 (C. C. A. 9th, 1913), the sale of the collateral took place before the bankruptcy, and the case of *Rogers Brown & Co.* v. *Tindel Morris Co.*, 271 Fed. 475, 476 (D. C., E. D. Pa., 1921), was an equity receivership and involved no question of the powers of a Court of Bankruptcy.

In *Worth* v. *Marshall Field & Co.*, 240 Fed. 395 (C. C. A. 4th, 1917), no question of a sale of collateral or of an injunction was in any way involved.

In *In re Hudson River Navigation Corp.*, 57 F. (2d) 175 (C. C. A. 2d, 1932), the collateral consisted almost entirely of notes which were obligations of third parties.

The one case cited by petitioners which really stands for the proposition for which it is cited (the *Ironclad* case) is not made applicable to a reorganization proceeding under Section 77 by subdivision (n) of Section 77, briefly mentioned by the petitioners. Subdivision (n) of Section 77 simply grants to a court which is proceeding under Section 77 the general powers which a Bankruptcy Court had under the old Bankruptcy Act so far as such grant is "consistent with the provisions" of Section 77. This grant of power cannot be twisted into a limitation of power, or in any event into such a limitation of power as would be inconsistent with the purposes of Section 77.

Moreover, even in an ordinary bankruptcy proceeding, before the enactment of Section 77, injunctions against the sale of collateral were issued when found necessary in order to carry out the purposes of such proceeding, namely, orderly liquidation and distribution.

Thus, in *John Matthews, Inc.* v. *Knickerbocker Trust Co.*, 192 Fed. 557 (C. C. A. 2d, 1911), the Court issued an injunction against the sale of collateral consisting of unsecured obligations of the bankrupt itself, because the sale would have prevented *pro rata* distribution among the creditors, would consequently have prevented the accomplishment of the purpose of an ordinary bankruptcy proceeding, and therefore the issuance of an injunction was necessary to enforce the Act. In sustaining the injunction, the Circuit Court of Appeals said (p. 558):

> "Any rule which would permit the proof of two notes for one indebtedness would permit the proof of a dozen and would substitute for *pro rata* distribution among real creditors distribution in accordance with the ability of a bankrupt to make manifold obligations for single debts."

The authority of this case has never been questioned in this proceeding or in any other case. The power to issue such an injunction was derived from the **necessity** of issuing it to preserve the purpose of the proceeding. It follows that such necessity gave the Court the power, even under the old Bankruptcy Act, to enjoin the sale of collateral under Clause (15) of Section 2.

The petitioners have not called to the attention of the Court any authorities which indicate that the express language of Clause (15) of Section 2 of the Act is not to

be given its plain force and effect, namely, that a court of bankruptcy has the power to issue any order which it finds necessary under the facts of a particular case to carry out the purpose of a proceeding under the Bankruptcy Act, whether ordinary bankruptcy or reorganization under Section 77. As previously stated herein, the District Court and the Circuit Court of Appeals have found that the issuance of the injunction order was necessary under the particular facts of this case to carry out the sole purpose of this proceeding under Section 77 for the reorganization of the Rock Island System. Accordingly, there can be no question but that the Court had power to issue the injunction order pursuant to Clause (15) of Section 2 of the Act.*

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* In their endeavor to raise a question for this Court, petitioners attempt to make a point that no express authority for the issuance of an order of this type is found in Section 77 itself. And they call attention to subdivision (l) of Section 77 which was obviously written with the purpose in mind of controlling litigation against the debtor, and which, therefore, incidentally provides for staying litigation to enforce liens. Petitioners cite the maxim *expressio unius est exclusio alterius*, and say that because Congress gave express power to stay judicial proceedings for the enforcement of liens, Congress intended to negative the power to enjoin enforcement of liens by means other than judicial proceedings.

There is a short answer to this argument of the petitioners. Subdivision (l) simply deals with the subject of controlling litigation, including litigation to enforce liens upon the estate, and is a grant of power to the Court to control litigation. A subdivision which constitutes a grant of power in connection with the subject of controlling litigation cannot be stretched by any logical process into a limitation of power in connection with a subject which does not involve litigation. Subdivision (l) simply has nothing to do with injunctional or other orders which do not relate to litigation. It certainly cannot be construed, as contended by the R. F. C., as containing the only injunctional powers of the Bankruptcy Court.

The maxim *expressio unius est exclusio alterius* as applied to Section (l) would mean only that it was not intended that an injunction should issue against the commencement of a judicial proceeding not designed to enforce a lien. But the maxim certainly cannot

SUBSIDIARY QUESTION. This is argued only by the Banks. They contend that the Court had no power to issue an injunction against the sale of their collateral, in a **summary** proceeding such as this one was, as contrasted with a **plenary** suit. They urge that the application for an injunction was an attempt to enforce an **adverse** claim to the pledged property in a summary proceeding. The proposition that adverse claims to property, where the person in possession has more than a colorable right, must be made in a plenary suit has never been questioned. However, the application for this injunction was not the assertion of an adverse claim to the collateral. The contention can be most simply answered in the language of the Circuit Court of Appeals:

> "Nor can we say the appellants, the claimants, occupied such an adversary status that a trial in a plenary suit was necessary. The trustees named by the court in the bankruptcy proceedings were not claiming adversely to appellants. The creditors were not claiming liens or title to property adverse to the trustees. The trustees admit the legality of the security held by the creditors, as well as the validity and amount of the creditors' claims.
>
> • • • • • •
>
> "The proceeding involved no adversary contest but merely the pursuit of a remedy." (R., p. 324.)

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be stretched to imply a limitation upon the injunctional power of the Court on subjects other than judicial proceedings.

To argue that, because the right to enjoin is specifically given by subdivision (1) in one class of case, it cannot exist in other and quite different cases, is to argue that the general powers clause, Section 2, Clause (15), is no longer in effect. But that clause was inserted in the statute for the precise purpose of preventing deficiencies of power and miscarriages of the proceedings resulting from the failure of specific sections expressly to state all the powers required by the Court for the purpose of making proceedings under the Act effective.

The issuance of an injunction order of this type is simply an administrative function of the Bankruptcy Court. It could not be the subject of a plenary suit in another court for it is an order made by the Bankruptcy Court to protect its own jurisdiction and the proceeding.

QUESTION 2. The three petitioning Banks, which are not located in the Northern District of Illinois, argue the question whether the District Court for the Northern District of Illinois had jurisdiction to issue an injunction against them.

This procedural point has no important bearing on this case. It raises only the question whether the injunction was properly issued by the District Court in the Northern District of Illinois in the case of these three petitioners, or whether it should have been issued in ancillary proceedings by the District Courts in the districts where these three Banks were located. This is a very minor point of procedure, since these District Courts would, as a matter of course, have followed the decision in the original jurisdiction, and have issued similar injunctions.

The Circuit Court of Appeals dealt adequately with this matter (R., pp. 322, 323), and there can be no doubt as to the correctness of its decision in holding that the collateral was property of the debtor, and that, under Section 77, the District Court in the Northern District of Illinois could issue injunctions against the defendants' interfering with this property in other districts, particularly in view of the express language* of Section 77, and of the obvious intent

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* The fifth sentence of subdivision (a) of Section 77 [11 U. S. C. A., §205(a)] provides:

> "If the petition is so approved, the court in which such order approving the petition is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property **wherever located.**"

of Congress to do away with ancillary proceedings in the case of railroad bankruptcies. The petitioning Banks themselves state in their brief (p. 20) that the provision of Section 77 set forth in the footnote on the preceding page "obviates the necessity of ancillary bankruptcy proceedings • • •."

As this Court has frequently held, the territorial jurisdiction of the District Court is a matter for legislation by Congress and does not involve any constitutional question. No question is presented here of due process involving lack of proper notice or an opportunity to be heard. The petitioners all received ten days' notice and had full opportunity to be heard and were heard.

QUESTION 3. The five petitioning Banks (but not the R. F. C.) argue that a construction of the Bankruptcy Act, including Section 77, permitting the issuance of this injunction, is in violation of the Fifth Amendment of the Constitution.

This contention is without any substance. Nothing need be added to the statement of the Circuit Court of Appeals on the subject:

> "As to the constitutionality of Section 77 of the Bankruptcy Act, little need be said in addition to what has already been stated, to show this objection is untenable. If the order assailed deals merely with the remedy, as we hold it does, then the amendments violate no provision of the Constitution. That such restraining orders affect the remedy only, see *Allebach* v. *Thomas*, 16 F. (2d) 853. Likewise, legislation which deals with the subject of bankruptcy, that is, legislation for the benefit and relief of creditors and debtors—is not subject to the same constitutional limitations as legislation which deals with

other subjects and which affects contractual rights and obligations of debtors and creditors. The grant of power 'to establish * * * uniform laws on the subject of bankruptcy' was necessarily a grant of power the exercise of which would impair the obligation of contracts. For legislation on the subject of bankruptcy contemplated a discharge of the debtor's debts—which is an impairment of contractual obligations. *Hanover National Bank* v. *Moyses*, 186 U. S. 181." (R., p. 326.)

III. Conclusion.

The petitioners make a few general observations to which we shall briefly refer in concluding.

They assert that a large amount of collateral loans made by governmental agencies and banks to railroads have been affected by the decision herein and that the effect of the decision herein will be to make these agencies and banks unwilling to grant similar loans in the future: Since the decision herein of the courts below is limited to proceedings under Section 77 and is further limited by the particular circumstances of this case, it will obviously affect only a very small portion of the loans referred to by the petitioners. Moreover, there is no sound public policy fostering the practice of managements of railroad corporations making desperate eleventh hour efforts to stave off insolvency proceedings and to stay in control through a reckless pledge of system obligations far exceeding in principal amount the funds received and indebtedness secured. When the point is reached where a railroad corporation can obtain funds only through pledging secured obligations of its own system which in face amount ($54,000,000) are three

times the amount of the loan ($17,000,000), the transaction would appear to be improvident and without due regard to the interests of existing creditors. There is no public policy dictating that railroad managements should have a free field for obtaining money on these terms.

The petitioners also assert that they are injured by having been unable to make a quick realization upon their collateral while in the meantime they have not been receiving interest on their loans and the market value of some of the collateral has declined. But the original long term of the loans and the character and amount of the collateral taken by the petitioners shows that they were not contemplating so-called quick loans on readily marketable securities or relying on a quick realization for their protection. Most of the collateral required by the R. F. C. was unlisted and had no ready market. Both it, and that required by the Banks, was in such large blocks as to make sale difficult and the total face amount required to be given in pledge so excessive as to show it was not of a type customarily taken by banks for really current loans. In addition, it has not been the policy of the R. F. C. merely to make quick loans but on the contrary it was the primary purpose of its creation to furnish funds to institutions as well as railroads on "frozen" collateral having no market. However that may be, the real value of this collateral does not depend upon the fluctuating market value of the bonds, but lies in the value of the System properties upon which such bonds are a lien, and the bonds held as collateral constitute a lien on the System properties in an amount three times the face amount of the loans. Accordingly, the Circuit Court of Appeals was correct in stating that the real position of the petitioners was not injured (R., p. 325).

Furthermore, holders of mortgage bonds have been accorded the same treatment under Section 77. They are not permitted to foreclose and yet they are not receiving interest and, if the System properties behind the collateral held by the Banks and the R. F. C. are declining in value, the properties securing these mortgage bonds are also declining in value to the same extent because they are the same properties. So far as concerns the statement that the banks and the government agencies were surprised to find that their remedy of selling collateral might be enjoined after the enactment of Section 77, the holders of mortgage bonds were equally surprised when they learned that their right to foreclose was to be enjoined under Section 77. And at any rate, it should have been no surprise to the petitioners herein because one of them, Mississippi Valley Trust Company, had previously been enjoined from the sale of similar collateral in the equity receivership of the Missouri, Kansas & Texas Railway.

> *Mississippi Valley Trust Company* v. *Railway Steel Spring Co.*, 258 Fed. 346, 354 (C. C. A. 8th, 1919).

It should be borne in mind that no attack whatever has been made on the validity of the collateral or the position to be accorded the petitioners in the plan of reorganization on account of their holding this large amount of collateral. In fact, petitioners have received approximately $377,000 through distributions on their collateral (R., p. 342).

The petitioners try to deal with the application for the injunction as if it involved a dispute between private litigants, each striving to establish his rights in a fund or to

diminish the other's claims,—that is, as if the holders of the System's outstanding bond issues and the Railway Company itself were attacking the Banks and the R. F. C., to diminish the claims of the latter or in order to take property rights from them.

This is not so. The order in question is purely an administrative and procedural matter and the dispute lies rather between the Federal District Court and the petitioners than between the petitioners and the respondents. The respondents are simply upholding the hands of the Federal District Court in its effort to administer this proceeding for the reorganization of the Rock Island System in such a way that a successful reorganization can take place and the System be placed once more on its own feet. The District Court, which has the onerous task of steering this reorganization proceeding to a successful conclusion and which was fully aware, in view of its background of the proceeding, of the obstacles to a successful reorganization, found and determined that the issuance of the order enjoining the sale of the collateral was necessary for carrying out the purposes of Section 77. The Court therefore issued the injunction order as an administrative measure to clear away a major obstacle to its operation of the reorganization machinery placed in its hands by Congress.

The petitioners have raised no questions which warrant review by this Court. The first question argued by the petitioners has not the general application implied but on the contrary is limited in scope. Their procedural and so-called constitutional questions are insubstantial. The decisions of the Courts below on the record in this case were so clearly right that a review by this Court would result only in affirmance.

Therefore, no useful purpose would be served by granting the writs applied for and it is respectfully submitted that the petitions for writs of certiorari should be denied.

Respectfully,

ELIHU ROOT, JR.,
Attorney for Protective Committee for Debtor's First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds.

WILKIE BUSHBY,
JOSEPH SCHREIBER,
Of Counsel.

GEORGE W. WICKERSHAM,
Attorney for Protective Committee for Debtor's 30-Year 4½%, Convertible Gold Bonds.

W. LLOYD KITCHEL,
EUGENE J. CONROY,
Of Counsel.

EDWARD C. BAILLY,
Attorney for Protective Committee for the Consolidated First Mortgage 5% Bonds of the Burlington, Cedar Rapids & Northern Railway Company.

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SUMMARY OF ARGUMENT.

I.

Section 77 of the Bankruptcy Act effects a fundamental change in reorganization procedure of railway corporations and in the jurisdiction of the bankruptcy courts.

The basic principle of a bankruptcy statute is that the property of the bankrupt should be liquidated, and the proceeds distributed among the creditors. Section 77, in providing for a reorganization plan for railroads, either insolvent or unable to meet their obligations, is not essentially a bankruptcy act, but a reorganization statute, since the roads must be kept in operation and the paramount interest of the public service must be preserved.

The section was adopted in order to remove many objections to the equity procedure of reorganization through the form of foreclosure and sale. Its principal incentive was to give to the Interstate Commerce Commission jurisdiction over the reorganization plan, and the consequent power to deal with the claims and interests of all creditors. This was in accord with the policy adopted in 1920 of giving the Commission jurisdiction over all security issues. Section 77 was added to the Bankruptcy Act, rather than to some other statute, because of the desire to utilize the machinery and procedure of the bankruptcy courts.

Detailed consideration of Section 77 shows that it applies to all creditors, secured and unsecured. For the first time in the history of bankruptcy legislation Congress has attempted to deal with the rights of secured creditors. Creditors are so defined in the act as to make it clear that

they can be dealt with only through the plan of reorganization, which plan is the sole end and aim of the act.

The plan contemplated by the statute deals with all the property of the debtor corporation and its subsidiaries. The court has no power to deal with the property, except the power to "operate the business." The determination and disposition of all interests in the property is a function vested exclusively in the Interstate Commerce Commission through the reorganization plan.

The legislative history of Section 77 makes it clear that it was the purpose to require all creditors, secured or unsecured, to be dealt with by the Commission in its consideration of the plan of reorganization; that in all such matters the judgment and decision of the Interstate Commerce Commission must prevail. The effect, therefore, of the filing of the petition for a reorganization, and its approval by the court as being properly filed, is immediately to fix a status for all creditors of the trust estate, which can be altered only by appropriate proceedings in the formation, consideration and adoption of a plan of reorganization, in the manner prescribed in the Act.

II.

A discussion of the points made by petitioners.

i. Section 67(d) of the old bankruptcy act, providing that liens given and accepted in good faith shall not be affected by proceedings under the old act, is not involved in the case, because the injunction to restrain the sale of the pledged collateral does not interfere with the lien of the pledgees. These pledgees will come into a reorganization plan with the status of secured creditors, and must be

dealt with accordingly. Any other construction of Section 67(d) would be inconsistent with Section 77(n), which makes the old act applicable only so far as consistent with the provisions of Section 77.

Likewise, the provisions of Section 57(h) of the old act, which provide that the value of securities held by secured creditors shall be determined by converting the same into money, by agreement, arbitration, compromise, or litigation, as the court may direct, is inconsistent with Section 77(n). Under Section 77, the determination of value of the securities and their disposition is within the exclusive province of the plan of reorganization. No creditor has a right to anticipate the plan of reorganization and the Commission's exercise of its statutory jurisdiction thereon by converting his collateral into money or otherwise disposing of it. The provision making secured creditors amenable to the reorganization plan was inserted into the act deliberately, as is shown by quoted debates in Congress, and there is no room for doubt as to its interpretation.

ii. No support for petitioners' position is to be derived from Section 77(l). Their argument is that, since that section authorizes the court to stay the sale of collateral pending suits, and to enjoin or stay the commencement or continuance of judicial proceedings to enforce liens, and fails to confer power to restrain the sale of collateral by a pledgee, the right of the pledgee to make such sale must be recognized. The court's power to enjoin the sale of collateral rests in Paragraph 15 of Section 2 of the Act. For the purposes of proceedings under Section 77, the jurisdiction of the court below extends to wherever the property of the debtor may be located.

iii. The interest of the debtor, that is, the trust estate, in this pledged collateral constitutes property. Title to it is in the Trustees in Bankruptcy. The court has exclusive jurisdiction of such property, wherever located. It may protect that jurisdiction by an injunction.

iv. The injunction was fully justified by the facts. A sale of the collateral held by the petitioners would increase the obligations of the trust estate, which must be dealt with in the reorganization plan, by some $40,000,000. The trust estate has other collateral pledged under various indentures now in default; if this also should be sold, the obligations of the trust estate would be increased by some $200,000,000; any such sale would amount to an anticipation of the plan of reorganization and an invasion of the jurisdiction of the Interstate Commerce Commission.

v. Sundry minor objections presented by petitioners are discussed.

ARGUMENT.

Only one question is presented in this case,—whether in proceedings in the District Court for the reorganization of a railroad under Section 77 of the Banruptcy Act, and pending the preparation and submission to the Interstate Commerce Commission and to the Court of the plan of reorganization contemplated by that section, the Court may restrain secured creditors from disposing of their collateral.

I.

Section 77 of the Bankruptcy Act effects a fundamental change in reorganization procedure and in the jurisdiction of the bankruptcy courts.

i.

The general purpose of the section.

As a first step in the consideration of the issue stated above, we must call the attention of the Court to the fundamental change in the law represented by Section 77; not only as those changes affect the rights of creditors, secured or unsecured, and of the corporations themselves, but of the public. This fundamental change has entailed, as a corollary, and as a matter of necessity, equally important changes in the jurisdiction and procedure of the Federal District Courts.

The Bankruptcy Act, as it stood prior to the enactment of Section 77, was the growth of a century or more of legislation and judicial decision. Its basic theory was that the

business or property of a bankrupt should be liquidated and distributed among the bankrupt's creditors. That done, the bankrupt was discharged. Congress did not exercise until the year 1800 its power to establish uniform laws on the subject of bankruptcies. Since the first statute was passed, the field has been extended to include persons not subject to the original law, voluntary petitions have been sanctioned, and composition agreements have been authorized. But, until the present statute, no bankruptcy act, so-called, included a railroad corporation.

Prior to Section 77, the only method of reorganizing a railroad corporation was through an equity receivership. Many criticisms have been made of these proceedings, and there were certain features in the conduct of the proceedings, such as the necessity for ancillary receiverships, which were troublesome and expensive. The equity receivership usually went through the form, and the form only, of foreclosure and sale. Only one court, so far as we know, had had the courage to look through the form and act upon the substance; thereby anticipating Section 77 by some sixteen years (*Phipps* v. *Chicago, R. I. & P. Ry. Co.*, 284 Fed. 945; C. C. A. 8th, 1922).

Railroad corporations cannot be liquidated; the railroads must be kept in operation. The paramount necessity is the public service. As a part of that necessity, they must constantly have an inflow of new capital for the necessary additions and betterments involved in their ordinary operation, maintenance and replacements. Since, in a financial depression like the one which has existed now for more than five years, this new capital can no longer be obtained from earnings or from borrowing, the corporation must in some measure be relieved from the stress

of maturing interest obligations. The difficulty in providing this capital is illustrated in the statutes creating the Reconstruction Finance Corporation, and particularly in the provisions of those statutes that the Reconstruction Finance Corporation may make loans to aid in temporary financing of railroads *unable to obtain funds through banking channels or from the general public* (Appendix to R. F. C. Brief, p. 3).

Another most important consideration was the public interest in the reorganization plan. Under the equity procedure the approval of the plan was for the Court, although since 1920 the issuance of the necessary securities has been placed within the exclusive and plenary jurisdiction of the Interstate Commerce Commission (*Interstate Commerce Act, Section 20a*). This Act, however, gave the Commission no jurisdiction over the details of the plan, or the settling of controversies as to the rights of creditors, secured or unsecured. All these matters were within the jurisdiction of the courts.

Section 77 must be read with these facts in mind.

When one reads it, one is impressed by the thought that its source of power may be in the commerce clause, as well as in the bankruptcy clause. The point is not important; it can be justified under either. The important point is that the paramount purpose of the section was the public interest, which is dependent upon the transportation system of the country and is vitally concerned with the continuance and efficiency of the railroad systems. It deals categorically with the three parties in interest,—the public, the creditors, and the debtor corporation and its stockholders. From the moment the petition is approved by the District Court, the Act impounds the rights of all, so to speak, until the

reorganization plan is consummated, to the end that through a readjustment, modification, or alteration of the rights of the creditors, secured or unsecured, and of the stockholders, the capital structure and the physical properties of a financially embarrassed railway company may be so reorganized, under the supervision of the Interstate Commerce Commission, as to enable the corporation to continue to function and adequately to serve the public.

The genius of the section centers in the reorganization plan, which must be considered by the Interstate Commerce Commission representing the public at hearings at which every creditor and every stockholder has a right to present his views, and must be confirmed by the Court. Every provision of the section is designed to bring about the formulation and acceptance of a feasible plan, involving only the issuance of such securities as shall be approved by the Commission as compatible with the public interest; second, to subject the corporation, its creditors and its stockholders to the control of a court which is vested with plenary power to protect the rights of all, and to preserve the status and relativity of such rights while the plan is being formulated; and, third, to provide the legal machinery for making an accepted and approved plan effective and binding upon all concerned.

To this end, Congress added Section 77 to the Bankruptcy Act; not because the proceeding contemplated by Section 77 was primarily a bankruptcy proceeding, but because Congress desired to utilize so far as "*consistent*" the machinery and procedure which had been developed under that Act. It might just as well have been placed in the Interstate Commerce Act, except for the desire of Con-

gress to utilize the well-established bankruptcy procedure of the federal courts.

But the interpretation of Section 77 cannot be predicated upon cognate provisions of the Bankruptcy Act; for the purposes of the Acts are diametrically opposed to each other. A detailed consideration of Section 77 will lead to the conclusion that Congress intended that when the court makes an order approving a reorganization petition as having been properly filed, the effect of the order is immediately and *ipso facto* to subject the debtor and its properties, and the rights of its creditors and stockholders, to the jurisdiction of the court and of the Interstate Commerce Commission, to be dealt with by the court and the Commission exclusively, subject only to the written consent of the requisite number of each class of creditors and stockholders, in the formulation, approval and confirmation of a reorganization plan.

A corollary of the foregoing is that the ordinary course of business conduct that is open to creditors and stockholders, and the ordinary remedies that are available to them, are necessarily held in abeyance, by the force of the amendment, pending the formulation of a reorganization plan; for the pursuit of such course, or the enforcement of such remedies, might interfere with and even prevent the formulation of a complete, efficient, equitable and nondiscriminatory plan. In other words, the effect of the Court's order approving the filing of the petition is to fix a status for the entire trust estate and all of its property, wherever located, which can only be changed through the formulation of a plan of reorganization, and its approval by the Commission and the Court.

ii.

Certain details of Section 77.

First. Section 77 contemplates that creditors shall act by classes, and not each creditor for himself. Action by an individual creditor in the exercise of a contractual right, or in the pursuit of a legal remedy, is inconsistent with the power and right vested in the debtor corporation, the Trustees appointed by the Court, the creditors, the stockholders, and in the commission, to propose a plan of reorganization embodying a modification or alteration of the rights of creditors generally, secured or unsecured, or of any class of them, including the rights of such individual creditor.

Action by an individual creditor is also inconsistent with the formulation of a plan. According to the express terms of the act a reorganization plan must be equitable, must not discriminate unfairly in favor of any class of creditors or stockholders, must be financially advisable, and must be compatible with the public interest. A plan conforming to all of these requirements could never be formulated if each creditor is allowed to exact the full measure of his individual rights, without reference to the rights of other creditors, of the debtor, or of the public. The amendment, therefore, treats the rights of creditors as relative, not absolute. And while it authorizes a modification of such rights, the modification itself must preserve the relativity of those rights, must be equitable, must not discriminate unfairly in favor of any class of creditors, must be financially advisable, and must be compatible with the public interest. All these matters are entrusted primarily to the Interstate Commerce Commission, and *thereafter* to the approval of the Court.

The section authorizes a reorganization plan embracing all the creditors of the debtor corporation, except those specifically pretermitted from the plan, and for whom provision is otherwise made. It provides that the term "creditors" shall include, for *the purpose of a reorganization plan, its acceptance* and *confirmation,* "all holders of claims, interests, or securities, of whatever character against the debtor or its property." All creditors, therefore, including the holders of securities, must defer individual action for the realization of their rights, and await the formulation of a plan. If this were not so, creditors, by their own act, could eliminate themselves from the reorganization plan, and thus defeat the very purpose of the amendment. Moreover, a member of a class of creditors could thereby escape being bound by the action of two-thirds in amount of the creditors of his class in accepting a plan. And individual creditors could prevent any modification or alteration of their rights—the very thing which Section 77 contemplates and expressly authorizes.

It might be stated, in passing, that the Congress possesses the constitutional power to require a modification of the rights of creditors of interstate railroad corporations for the benefit of the general good, where the exertion of the power is necessary in order to enable such corporations, through a reorganization of their capital structures and physical properties, to continue to operate in interstate commerce, and to serve the public. The questions raised by the briefs of petitioners as to the constitutionality of Section 77 on the ground of its conflict with the Fifth amendment are, therefore, not of great weight. The principle has been stated by the Supreme Court as follows:

> "Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interferences. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest."
>
> *Nebbia* v. *New York* (1934), 291 U. S. 502, 54 Sup. Ct., 505.

Second. The amendment provides that the plan of reorganization may deal with all or any part of the property of the debtor. The equity of the debtor in securities pledged by it as collateral for loans made to it is property of the debtor. As such property, the amendment authorizes its disposition to be provided for in the plan of reorganization, and the disposition proposed in the plan will be binding on all concerned if the plan is accepted, approved and confirmed. The pledgee, therefore, is impliedly prohibited by the amendment from selling the securities, and thereby depriving the debtor, the creditors, the stockholders and the commission of their statutory right to effect a disposition of them through the approval, acceptance and confirmation of a reorganization plan.

Section 77 does not confer power even on the court itself, much less on the holders of claims against the trust estate, to deal with the property constituting the trust estate. The only power the court has with respect to the property is either directly or through trustees, and sub-

ject to "the jurisdiction of the Commission, as provided by the Interstate Commerce Act as amended, . . . *to operate the business of the railroad corporation.*" The matter of dealing with the property, in the sense that it constitutes assets of the trust estate, is committed exclusively to the Interstate Commerce Commission, and the only power conferred on the court is that of confirming a reorganization plan, dealing with the debtor's property, approved by the commission and certified by it to the court, if it conforms to the requirements of subsection (g) of the amendment; or to refuse to confirm it if it does not conform to such requirements. The court is powerless to propose a plan of reorganization or to alter or amend a plan certified to it by the commission. And since Congress conferred exclusive power on the commission to deal with the property of the debtor through the consummation of a reorganization plan that will be binding on all concerned, it could not have intended to leave individual creditors or classes of creditors free to thwart the judgment of the commission, or to paralyze its action, by pursuing remedies and making a disposition of the property of the debtor wholly inconsistent with the purpose of the amendment, and contrary to the necessary implications of its positive terms. And the authority conferred on the court, which is indicative of the real province of the court, is the power to prevent through its orders and injunctive process any interference by creditors or others with the property and affairs of the debtor, pending the formulation, approval and confirmation of the plan.

Thus, subsection (a) provides that if the petition for a reorganization is approved by the court as having been properly filed, the court shall, "during the pendency of the

proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located." And subsection (l) provides:

> "In proceedings under this section *and consistent with the provisions thereof,* the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and his property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."

The outstanding feature of Section 77 is that it confers the power of reorganizing embarrassed railroad corporations not on the courts, but on the Interstate Commerce Commission. By its express provisions the commission is constituted a *quasi* judicial tribunal, invested with the power, and charged with the duty and responsibility, of perfecting and effecting a reorganization plan embodying a modification of the rights of creditors and a disposition of the property of the debtor that shall be equitable, shall not unfairly discriminate in favor of any class of creditors, shall be financially advisable, and shall be compatible with the public interest; to the end that the debtor corporation may be enabled to continue to operate its railroad properties for the benefit of its creditors, its stockholders, and the dependent public. Creditors, secured and unsecured, are required by the amendment to submit their rights to the commission, to be adjusted and provided for in a reorganization plan. They are given a day in court before the commission, in public hearings to be held on the plan, and the only remedy afforded them by the amendment is the right

to object to the plan itself, which includes a disposition of their claims, and of the property of the debtor, and to oppose an acceptance of the plan by the class of creditors to which they belong.

Third. The legislative history of Section 77 confirms these views.

The interpretation which we have placed on Section 77 is strongly fortified by the changes which were made in some of its provisions during its passage through Congress.

1. Companion bills were introduced in the House and in the Senate. The first sentence of subsection (b) as it appeared in the bills as originally introduced, and in the bill that originally passed the House, read as follows:

"A plan of reorganization within the meaning of this section (1) may include a proposal to modify or alter the rights of creditors generally, or of any class of them" (H. R. 13958, 72d Congress, 2d Session).

In the bill that passed the Senate, which was afterwards concurred in by the House, the word "shall" was substituted for the word "may." (76 Cong. Rec., p. 2905).

The substitution of "shall" for "may" is significant. It was evidently the thought of Congress that in order to reorganize the embarrassed railroads of the country there would have to be a modification of the rights of creditors, and it was the intention of Congress that the proposal for such modification should be included in the plan of reorganization itself. The obvious purpose was to preserve the relationship between the various classes of creditors and stockholders, for all are vitally interested in the modification of their respective rights. And by requiring that

a proposal to modify such rights shall be included in the plan, Congress safeguarded the rights of all; for a plan of reorganization could not become binding on them unless it was accepted by two-thirds of each class of creditors and stockholders. Moreover, the public itself is interested in the modification of the rights of creditors and stockholders, and the mandatory requirement that such proposed modification shall be included in the plan of reorganization was a potent means of safeguarding the interest of the public, because the plan of reorganization, including the proposed modification, could not become effective without the approval of the Interstate Commerce Commission. This is entirely consonant with the interest which the Interstate Commerce Commission has always displayed in the relation between capital stock and funded debt, and its suggestions from time to time that the ratio of funded debt to stock should be reduced.

During the consideration of the measure in Congress, an even more important change was made in subsection (b), which now requires that the plan

> "shall include a proposal to modify or alter the rights of creditors generally, or of any class of them, *secured or unsecured*, either through the issuance of new securities of any character or otherwise."

As we point out below, this language, together with similar language in the cognate Sections, 74 and 77B, constitutes the first action by Congress which contemplates, through bankruptcy proceedings, any modification or alteration of the rights of *secured* creditors.

2. The term "creditors" was defined in the original bill as follows:

"The term 'creditors' shall include, for the purpose of a reorganization proceeding under this section, all holders of claims of whatever character against the debtor or its property, whether or not such claims would otherwise constitute provable claims under this Act" (H. R. 13958, 72d Congress, 2d Session).

This definition was changed to read as follows:

> "The term 'creditors' shall, except as otherwise specifically provided in this section, include, *for all purposes of this section and of the reorganization plan, its acceptance and confirmation,* all holders of claims, interests, or securities of whatever character against the debtor or its property, including claim for future rent, whether or not such claims, interests, or securities would otherwise constitute provable claims under this title" (Sec. 77(b)).

This was a radical change, and one which throws considerable light on the proper interpretation of Section 77. It evidenced the intent of Congress, conclusively manifested by other amendments to the statute, to transfer the handling and control of the whole reorganization scheme, with all of its details, including the modification of the rights of creditors and stockholders, and the disposition of the debtor's property, from the court to the Interstate Commerce Commission, leaving practically nothing of material importance for the court to do except to examine the plan accepted by the creditors and stockholders, and approved by the commission, and confirm it if it met the requirements of subsection (g); or to disapprove it, and file an opinion stating its reasons therefor, if it failed to meet such requirements. And it evidenced the further intent of Congress to bring all the creditors, secured and unsecured, into

the scope and binding effect of the reorganization plan, to tie their rights into the nexus of the plan, and to keep them there until the plan is accepted and confirmed.

Under the amendment, therefore, the relative rights of creditors become fixed, so to speak, by the filing of the reorganization petition, and the status of such rights as of the date of the filing of the petition must remain unchanged until a plan of reorganization, proposing a modification of such rights, is formulated. The fundamental theory of the amendment is that a modification of the rights of creditors is a matter which concerns all creditors and stockholders alike, and also the public, and should be dealt with by the concerted action of all in the formulation of a reorganization plan.

The language underscored above fixed the creditors' status for all purposes of the reorganization plan, its acceptance and confirmation. That status is fixed as of the time when the Court approves the filing of the petition. No creditor, however well secured, can wash his hands of the proceeding until his claim has been passed upon by the Interstate Commerce Commission.

3. The debates in Congress during the passage of the bill, as well as the specific amendments made to it, conclusively show that such was the intention of Congress. The debates may be referred to for that purpose.

Manhattan Properties v. *Irving Trust Company*,
291 U. S. 320, 54 Sup. Ct. 385 (1934).

In stating and answering the objections to the bill during its pendency in the House, Mr. Dyer of Missouri said:

"The obvious objection to this bill is that it is a reorganization by the Interstate Commerce Commission, which would control in every respect, and the interposition of the court is simply to give legality to the Interstate Commerce Commission action" (76 Cong. Rec., p. 2911).

Mr. Dyer's position was that all the details of the reorganization should be left to the Commission, which was composed of a body of experts intimately familiar with railroad problems, and not committed to the courts, which might or might not have any expert knowledge of such matters. He further contended that the rights of a single class of creditors would affect the rights of other classes of creditors and of the stockholders, and, therefore, should be provided for in a plan which embraced them all. He said:

"The bill does state that the petition may propose to modify or to alter the rights of creditors generally or of any class of them; but it is evident that if applied to a single class it would affect the rights of other classes and stockholders, except in the case of a very simple capital structure." *Id.*, 2911.

Mr. Rayburn of Texas:

"The bill provides that the commission shall take off of the court all of the burden of holding hearings on the proposed plan of reorganization, of recommending a plan to creditors and stockholders who would be affected, of authorizing the issuance of securities and making orders conforming to the Interstate Commerce Act, and of submitting to the court a complete record on which it could determine whether or not, in fairness and justice to all con-

cerned, a plan of reorganization acceptable to two-thirds of the creditors in amount for each class should be approved." *Id.*, 2917.

Mr. LaGuardia of New York:

> "The next thing we did in this bill which is innovation is to bring complete control, or, as the Solicitor General says, 'giving broad powers to the Interstate Commerce Commission in the initiation, formulation, and approval of the reorganization plan.' We did just that." • • •
>
> "The purpose of this bill is to make that approval effective. It is to make that approval what it is intended it should be, a complete supervision and control of every detail and factor of a reorganization plan." *Id.*, 2923.

During the further discussion of the bill, Mr. LaGuardia said:

> "It is to overcome such a condition that we have written into this bill, as I said before, the powers of initiation, formulation and approval of the plan, and outlined the procedure in such a way as to make it clear that the judgment and decision of the Interstate Commerce Commission must prevail. • • •
>
> "The purpose of the bill is to convey such broad statutory powers to the commission as to give it, from the very beginning to the end, complete supervision and control and decision of railroad reorganization. • • •
>
> "The plan now goes to the court for final approval, but this approval is on the record of the case as submitted by the commission to the court. The court cannot commence hearings *de novo*, it cannot modify the plan, it cannot substitute its plan for one approved by the commission." *Id.*, 2924.

In discussing the bill in the Senate, Mr. Hastings said:

> "As the House considered it in committee and passed it they practically passed the power away from the federal courts into the Interstate Commerce Commission, leaving almost nothing for the courts to do except to approve of that which had been done by the Interstate Commerce Commission." *Id.*, 5106.

Mr. Hastings further said:

> "The Interstate Commerce Commission are familiar with the railroads. They know all the phases of the railroad problems. They could help the railroads to arrange a plan. They would send out notices to every creditor and to all the stockholders. They would all have an opportunity to come before the commission and be heard. If they agree on a plan which the Interstate Commerce Commission finds equitable and that it ought to be accepted, then it is submitted to the creditors of the corporation." *Id.*, 5108.

Mr. Robinson of Arkansas:

> "Reference has been made to the fact that the Interstate Commerce Commission is a tribunal intrusted with the regulation of railways engaged in interstate commerce. I point out to my good friend the Senator from Georgia (Mr. George) who criticized the amendment and who objected to it, that no reorganization can occur under the bill without the express approval of the Interstate Commerce Commission. So that we will have the advantage of the advice, the recommendation and decision of the Interstate Commerce Commission respecting almost every important step which it is necessary to take in connection with the reorganization of a railroad." *Id.*, 5128.

It must constantly be borne in mind that the sole purpose of the amendment is to bring about a reorganization plan, a readjustment of the capital structure, that shall be consented to by the creditors and stockholders of the debtor railroad company, and shall have the approval of the Interstate Commerce Commission and of the court. The amendment obviously contemplates that all matters which vitally affect the affairs of the debtor corporation, including the rights of its creditors and the disposition of its properties, shall be provided for and incorporated in the reorganization plan as a part and parcel of the plan itself. Any other construction would defeat or at least might jeopardize the accomplishment of the purpose of the amendment. And since Congress provided that the disposition of all these matters should require the consent of every class of creditors and stockholders, the approval of the Commission, and the approval and confirmation of the court, it could not have intended that individual creditors, or a class of creditors, should be at liberty to follow an independent course, or to enforce an independent remedy, for the realization of their rights. This the petitioners were attempting to do, in direct contravention of the spirit, the purpose and the express provisions of the amendment.

The district judge found, as a fact, that a sale of the pledged securities by the pledgees would not only impede and obstruct a reorganization of the trust estate, but would prevent the formulation and consummation of a plan of reorganization, and that, for this reason, the petitioners should be enjoined from taking such step, until the further order of the court. The court had the power, under the amendment, to issue the injunction, and the circumstances fully warranted it.

II.

The points made by petitioners.

Viewing Section 77 in the foregoing light, it is clear that the greater part of the points and arguments submitted by the petitioners herein becomes irrelevant.

All the points made and authorities cited as to the power of the district courts under the old bankruptcy proceedings or in equity receiverships to enjoin the sale of securities pledged by a bankrupt, or by a corporation undergoing reorganization, are moot, because Section 77 of the new procedure has completely changed the status of such pledged securities.

This applies also to the objections made by the Reconstruction Finance Corporation (Brief, p. 22) to the sufficiency of the original petition. From the standpoint of Section 77, properly construed, the petition was entirely adequate and sufficient. It showed the court that the Reconstruction Finance Corporation was a secured creditor for the amount of $13,659,877.58, evidenced by six promissory notes, secured by the pledge of listed collateral (meaning collateral listed on the New York Stock Exchange) of the face value of $20,811,500, and of unlisted collateral consisting of First Mortgage Bonds of subsidiary companies of the debtor's system of the face value of $19,490,965.85, all of such unlisted collateral being owned by the debtor (R. 37-38); and secured further by the assignment of the debtor's distributive share in the assets of the Railroad Credit Corporation amounting to approximately $1,400,000. Exhibits A and B to the petition consisted of copies of the form of note to the Reconstruction Finance Corporation

and of a separate agreement with the Corporation and the various banks (R. 44-48). Petition No. 15, paragraph 8 (R. 106), shows that at the time of the filing of the petition, the Debtor was not earning interest on its funded debt. The notes to the Reconstruction Finance Corporation all contained the power to sell the collateral without notice in the event of non-payment of interest. The possibility of sale of the collateral without notice and the consequent anticipation of the action of the Interstate Commerce Commission under any plan that might be proposed, constituted sufficient ground for the court's action in issuing the injunction to preserve the status of these secured debts.

We now pass to a consideration of the other points made by petitioners.

i.

Sections 67(d) and 57(h) of the old bankruptcy act are not applicable.

Petitioners contend that the injunction violates rights preserved to them by certain sections of the old bankruptcy act. The first one we consider is Section 67(d) (U. S. C. A., Title 11, Sec. 107(d)), which reads:

> "Liens given or accepted in good faith and not in contemplation of or in fraud upon the provisions of this title, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall, to the extent of such present consideration only, not be affected by anything herein."

We observe, first, that the injunction now before the Court does not in any degree affect the petitioners' liens

on the pledged securities. Those liens are unimpaired. All that the injunction does is to require the holders to refrain from enforcing their liens through sale or conversion of the collateral, and to hold the collateral *in statu quo* until the further order of the court. The pledgees still constitute secured creditors, and will come into the reorganization plan as secured creditors; and in the formation of the plan their rights as secured creditors must be recognized. This, indeed, is our basic contention,—that Section 77 requires that the rights of creditors, secured and unsecured, shall be dealt with in a reorganization plan, and not otherwise. Section 67(d), therefore, presents no obstacle whatever to the exercise by the court of the power which it exercised in issuing this injunction.

But even if Section 67(d) should be construed as preserving not only the lien, but also the lienor's remedy of private sale, then the logical answer is that Section 67(d) is not effective in these proceedings, because it is not consistent with the provision of Section 77.

Section 77(n) reads as follows:

> "In proceedings under this section *and consistent with the provisions thereof,* the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and his property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."

This section is relied upon by the petitioners (R. F. C. brief, p. 32, and Banks' brief, p. 36) as ground for the assertion that their rights are still governed by Sections

67(d) and 57(h); but petitioners place the emphasis in the wrong place. The important part of Section 77(n), in this connection, is the words "consistent with the provisions thereof."

It cannot be consistent with the provisions of Section 77, the procedure under which culminates in a reorganization plan, to permit lien holders to sell collateral consisting of the property of the trust estate, thereby anticipating such modifications or alterations of their rights as may be required by the Commission, and approved by the Court, as a part of the plan.

Section 57(h) of the Bankruptcy Act (U. S. C. A., Title 11, Sec. 93(h)) reads as follows:

> "The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance."

The banks in their brief (p. 22) rely on the foregoing language as a justification for their claim of a right to sell the collateral; but a reference to certain portions of Section 77 will negative this idea.

We call the attention of the Court to the first part of paragraph (b) of Section 77:

> "(b) A plan of reorganization within the meaning of this section (1) shall include a proposal to modify or alter the rights of creditors generally, or of any class of them, *secured or unsecured*, either

> through the issuance of new securities of any character or otherwise; (2) may include, in addition, provisions modifying or altering the rights of stockholders generally, or of any class of them; . . ."

There is no room for mistake in the interpretation of this language. The statute, in plain terms, provides that the plan of reorganization *shall* include a proposal to modify or alter the rights of secured creditors. The word "shall" was inserted deliberately. This appears from our comparison above, page 15 (76 Cong. Rec., p. 2905).

We next refer to Section 77(e), which reads in part:

> "(e) A plan of reorganization shall not be finally approved by the commission until it has been accepted in writing and such acceptance has been filed in the proceeding by or on behalf of creditors holding two-thirds in amount of the claims *of each class* whose claims or interest would be affected by the plan, . . ."

And to clause (7) of Section 77(h), which provides that upon confirmation the provisions of the plan shall be binding upon

> "(7) all *secured creditors* of each class of which two-thirds in amount shall have accepted the plan."

With these provisions in mind, we now turn to Section 77(g):

> "(g) Upon such approval by the commission, and after hearing such objections as may be made to the approved plan, the judge shall confirm the plan if satisfied that . . .
>
> "(6) the plan provides with respect to any class of creditors the acceptance of which is requisite to

> the confirmation of the plan, and who would not become bound by the plan under the provisions of subdivision (h) of this section, adequate protection for the realization by them of the value of their securities, liens and claims, either (a) by the sale of such property subject to their liens, if any, or (b) by the sale free of such liens at not less than a fair upset price, and the transfer of such liens to the proceeds of such sale, or (c) by *appraisal* and payment in cash of either the value of such liens and claims or, at the objecting creditors' election, *the value of the securities allotted to such liens* and claims under the plan. Section 57, clause (h), of this Act shall be applicable to the *appraisal* of securities under this section, and the value of the unpaid balance shall be *appraised* as an unsecured claim; . . ."

This makes it clear that the plan must protect a *class of secured creditors* either under subdivision (a) or subdivision (b), above quoted, or under subdivision (c):

> "by appraisal and payment in cash of either the *value* of such liens and claims or, at the objecting creditors' election, the value of the securities *allotted to such liens and claims under the plan.*"

The above reference to Section 57(h) makes it "applicable" only to the *appraisal* of securities; not to their sale or conversion into cash. Further, it is made applicable only to the appraisal of the securities "allotted to such liens and claims under the plan." There could be no clearer indication that the securities now pledged under petitioners' loans must be dealt with in the plan, and, if Section 57(h) has any application, it is only in connection with the appraisal of the securities which may be allotted under the plan to the petitioners as "secured creditors."

In view of these specific provisions of Section 77, how can it be said that Section 67(d), so far as it involves a right to sell the collateral in satisfaction of a lien or Section 57(h), so far as it authorizes the court to dispose of the collateral, is consistent with Section 77? The two are fundamentally opposed, and the only logical construction is that Section 77 has stayed the right of the secured creditor to enforce his lien until it can be done as part of a reorganization plan.* For these secured creditors to at-

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* Section 77(b), above quoted, together with a substantially identical provision in Section 77B, and a somewhat similar provision in Section 74, relating to compositions and extension agreements of individual bankrupts, constitute the first instance where Congress has subjected secured creditors to the bankruptcy power. See Gerdes, *Constitutionality of Section 77B of the Bankruptcy Act*, 1934, XII New York University Law Quarterly Review, 196, at page 205. While the article refers to Section 77B, the language is so apposite to the practically identical provisions of Section 77(b), that we take the liberty of quoting:

> "The central purpose of a proceeding under Section 77B is the reorganization of a corporate debtor in accordance with a plan which, through the issuance of new securities or in other ways, may alter the rights of creditors of any class, secured or unsecured, and of stockholders of any class. For the first time in the history of federal legislation, secured debts are subjected to the bankruptcy power and the secured creditor is faced with the possibility that he may be compelled to submit to an alteration of the rights which he acquired by his contract.
>
> Control over unsecured debts has long been established. A composition which materially modifies the claims of unsecured creditors may be imposed upon a dissenting minority.
>
> There is no difference in principle between a creditor who is secured and one who is unsecured. Both have claims which they are entitled to have satisfied in full out of the debtor's estate. The form of the claim and the method of satisfaction differ, but the difference is one of degree rather than of substance. Fundamentally, the rights are the same. If insolvency or inability to meet debts justifies legislative interference with the one, the same condition will justify similar interference with the other.

tempt to enforce any rights against the pledged collateral is a direct invasion of the province of the Interstate Commerce Commission, to which body was exclusively committed the duty of passing upon a plan and certifying it to the court. Pending the consideration of a plan, the status of each class of creditors, secured and unsecured, must be preserved. Section 77 so commands. It would be a futile statute if the courts of the United States lacked the power to insure that this be done.

In *In re Burgh*, 7 Fed. Supp. 184, at 185 (N. D. Ill., 1933), the Court had before it the provision of Section 74 of the Act, which affects the rights of certain secured creditors in composition proceedings under that section. The Court said:

> "The general purpose of section 74 (11 U. S. C. A., Sec. 202) is, generally speaking, broader in one respect than the general purpose of the Bank-

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The subject of bankruptcies comprehends every phase of 'the relations between an insolvent or non-paying or fraudulent debtor, and his creditors, extending to his or their relief.' No definition has ever attempted to limit it to creditors whose claims are unsecured.

A claim is none the less a debt because it is fortified by security, and the holder of such a claim is none the less a creditor. When the requisite financial stringency develops, both the one from whom and the one to whom the claim is due properly come within the subject of bankruptcies. The problem of achieving an equitable adjustment among the secured creditors of an embarrassed debtor and a fair distribution of his shrunken assets among them is essentially the same as in the case of his unsecured creditors. The need for protection is identical.

Congress, possessing a power which 'must, indeed, be held to be general, unlimited and unrestricted over the subject,' may provide the necessary procedure. The fact that hitherto Congress has seen fit to leave this phase to the debtor-creditor relationship untouched does not mean that it can not bring it under control. Its failure to act was a matter of policy and not the measure of its ultimate power."

> ruptcy Act of 1898, and that is the purpose whereby it is proposed that the secured debts of the bankrupt, or debtor, may be affected by the act. The court is unable to discover any good reason why the extension of the benefits of the Bankruptcy Act to secured debts of the bankrupt or debtor should render the act, so extending the benefits, unconstitutional. Generally speaking, bankruptcy acts have always discharged unsecured debts. It is now proposed to compromise or extend secured debts. A secured debt or lien is, so far as the Constitution of the United States is concerned, a no more sacred kind of property than an unsecured debt. In other words, an unsecured debt and a lien are both property, viewed from the standpoint of the Constitution, and the Constitution expressly permits and grants to Congress the exercise of the power to affect such property, whether it be an unsecured debt or whether it be a lien, by laws relating to the 'subject of Bankruptcies.'"

This reasoning is entirely sound, and might clearly have been applied to Section 77(b). If the contention of petitioners is correct, the express mandate of the section, that secured creditor shall be dealt with in the plan, is absolutely destroyed.

The inclusion of secured creditors in Section 74, which was under consideration by Judge Barnes in the above case, was not inadvertent. The matter was discussed in Congress. Mr. Michener, of Michigan, said (76 Cong. Rec., p. 2928):

> "There are those among us who doubt the power of the court, under the Constitution, to take away from the secured creditor his right to enforce his lien in accordance with the stipulated contract. Of

course, under this proposal the lien is not destroyed, but in many cases the only value of the lien is the right vested in the secured creditor to enforce the lien according to the terms of the contract. A delay may possibly, and in many cases will, impair the contract which the parties have solemnly entered into.

I realize that the courts have already gone a long way in permitting the Federal court to take jurisdiction over all of the property of the debtor, even to delaying the enforcement of liens in forums other than the bankruptcy court having jurisdiction, but it must be remembered that in those cases which have been cited to-day the court acted upon the principle that it was engaged in the orderly liquidation of the debtor's property, with the right to enforce the rights of the secured creditors. The very purpose of the contemplated procedure is to avoid liquidation, and it is at least very doubtful, if the court will ever go so far, under the bankruptcy clause of the Constitution, as to hold at bay indefinitely the right of a secured creditor to take advantage of his contract, in the presumption that the debtor might, if given an extension, some way, somehow, at some time in the future, be able to make the lien as valuable to the creditor as it was when the extension was granted. This is substituting the guess of the court for the written agreement of the parties. I realize that there is a distinction between destroying a lien and modifying the procedure by which a lien is made effective."

Nevertheless, Section 74 became a law and the quoted provisions in Section 77 likewise became a law.

ii.

Section 77(l) does not sanction sale of the pledged collateral.

Section 77(l) reads as follows:

> "In addition to the provisions of Section 11 of this Act for the staying of pending suits against the debtor, such suits shall be further stayed until after final decree (and)* the judge may, upon notice and for cause shown, enjoin or stay the commencement or continuance of *any judicial proceeding to enforce any lien upon the estate until after final decree.*"

The petitioners contend that, by familiar rules of statutory construction, the failure of this subsection specifically to include the authority to stay the sale of collateral otherwise than in judicial proceedings, indicates an intention that the court should have no such power (Banks' brief, p. 37; R. F. C. brief, p. 48).

Power to do what the Court has done in this case is found in the comprehensive language of Section 2(15) of the Bankruptcy Act, which authorizes the Court to

> "make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title."

Section 77(l) sheds an interesting light, however, on the practical necessity for the injunction. There can be no doubt that this section authorizes the court to stay the enforcement of the mortgage bonds themselves, and the

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* The word "and" seems inadvertently to have been omitted from the statute.

Court has stayed such enforcement (Order approving petition, par. 8, R. 9). No bondholder or trustee of the mortgage can enforce a lien on the trust estate pending reorganization. The First and Refunding Mortgage Trustees may not proceed to enforce their lien on the physical properties of the trust estate, although the principal amount of the bonds, of which $163,000,000 are outstanding, fell due April 1, 1934 (R. 65). Under the orders of the Court made pursuant to paragraph (l), all the proceedings to enforce the lien of the mortgage are stayed. Yet, if petitioners' view of paragraph (l) is correct, the Trustees of the First and Refunding Mortgage may forthwith sell and dispose of the $66,000,000 of bonds and $30,000,000 of capital stock of subsidiary corporations (R. 66, par. 4(a)) all pledged as collateral thereunder.

Likewise petitioners, as pledgees of $54,000,000 face amount of bonds, secured by a lien on various portions of the trust estate, may increase the obligations of the trust estate to the extent of approximately $37,000,000 by selling these bonds.

As a practical matter, this demonstrates that the failure of Section 77(l) specifically to include the power to restrain pledgees from selling their collateral privately did not manifest an intention on the part of Congress that they should have any such right, but merely that Congress considered that the courts have power, under Section 2(15) of the Act, to restrain such private sale, if it should become necessary.

iii.

Territorial jurisdiction.

In our view of proceedings under Section 77, the question of territorial jurisdiction of the District Court, which is argued at length by the non-resident banks (Banks' brief, p. 79), is disposed of by the very nature of the proceedings.

One of the first difficulties dealt with in putting the reorganization statute into the Bankruptcy Act was the matter of ancillary proceedings.

Most railroad systems operate in many states. The Rock Island, principal debtor in this case, extends into fourteen. Congress met this problem by authorizing all the subsidiary companies of the principal debtor to come into the same proceedings, and to effect a plan of reorganization in connection with, or as a part of, the principal plan; and provided that, having been admitted,

> "thereupon such court shall have the same jurisdiction with respect to it (referring to the subsidiary corporation) its property, its creditors and stockholders, as the court has with respect to such other debtor." (Sec. 77(a))

This provision necessarily extended the territorial jurisdiction of the District Court in which the principal proceedings were pending. It was for this reason that the first part of Section 77(a) provides:

> "the court in which such order approving the petition is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located."

As a practical matter, the District Court for the Northern District of Illinois, in which these proceedings were instituted, is now, through its Trustees, operating a railroad system of 8,300 miles, with lines in fourteen states (Order No. 10, R. 26; Order No. 25, R. 97). None of these subsidiary debtors has a line of railway within the Northern District of Illinois. The Court under the aegis of this Act has reached out its hands to thirteen states, and daily and hourly, through its Trustees, is engaged in operating a large railway system in those states, as well as in the Northern District of Illinois.

Being so engaged, it may protect that property, wherever located. The injunction order of the court may run to any point where there may be property.

> "In bankruptcy, this rule applies regardless of whether the property is located in the district in which the bankruptcy proceeding originated. The *injunction* to protect its possession may issue either *from the court of original jurisdiction,* or from the federal court for the district in which the state court suit is brought or in which the plaintiff in that suit resides. *Isaacs* v. *Hobbs Tie and Timber Company,* 282 U. S. 734, 737-8."
>
> *Ex parte* Baldwin and Thompson, Trustees, *et al.*, 291 U. S. 610, 54 Sup. Ct. Rep. 551 (1934).

The case cited involved a petition by trustees in bankruptcy, appointed by the District Court for the Eastern District of Missouri, in a proceeding therein pending under Section 77, to remove a case brought in a state court of Texas to the United States District Court for the Southern District of Texas. The plaintiffs in the state court sought to forfeit title to a part of the right of way comprised in the

trustees' estate, said right of way being located in the State of Texas, and to enjoin the trustees from making further use of the lands for the operation of the railway. In dismissing the petition for mandamus to compel the U. S. District Court to take jurisdiction, the Supreme Court further said:

> "We are of opinion that the trustees may be entitled to have their controversy with the investment company adjudicated in the federal court, but are not entitled to the remedy of mandamus, because, to secure adjudication in the federal court of their rights and duties, they could have applied, and still can apply so far as now appears, *either in the original bankruptcy proceeding*, or by an ancillary bill in Texas, for an injunction to restrain the investment company from prosecuting its suit in the state court."

And again:

> "It is sufficient that the extraordinary remedy of mandamus should be denied, because the Trustees may by the common remedy of injunction prevent any interference with the jurisdiction of the bankruptcy court. Compare *Ex parte Park Square Automobile Station*, 244 U. S. 412, 414; *Ex parte Riddle*, 255 U. S. 450; *Ex parte Kreutler-Arnold Hinge Last Co.*, 286 U. S. 533."

The test of the Court's power does not depend upon the possession of the property. Any injunction operates *in personam*. The injunction which the Trustees in the *Baldwin* case might have secured from the District Court for the Eastern District of Missouri would have acted *in personam* against the Investment Company in Texas. The

fortuitous circumstance that in that case the property was actually in the physical possession of the Trustees did not enlarge the Court's power. The Trustees in this proceeding have title to all the property that belongs to the trust estate, including the interest of the debtor in these pledged securities. Having such title, the Court has power to protect it in any necessary way, including an injunction against any person in possession of such property who might, unless enjoined, alter its status to the detriment of the reorganization proceeding.

iv.

The Injunction Was Justified by the Facts.

This is discussed by the banks in their brief, at page 49, and again at page 74; and in the Reconstruction Finance Corporation brief, page 89. The banks point out (Brief, p. 12) that the market value of the collateral securing their loans has declined since the injunction was issued from $4,153,355 to $2,389,980.

This decline in market value, of course, has affected all the other securities of the trust estate, both those of the principal debtor and those of the subsidiary corporations. It is not caused by the injunction, but by the continuance of the depression. It is the same situation which up to this time has prevented a reorganization, and prevented the Reconstruction Finance Corporation from being able to suggest a feasible plan of reorganization when the Trustees called all the creditors together and asked them for their suggestions (Appendix to R. F. C. Brief, pp. 170, 172).

But the continuance of the depression has accentuated the necessity for the injunction. Whether the market value of the pledged securities is greater or less than the amount of the loans for which they are pledged, the necessity for the injunction exists in either case; indeed, it might be said that the necessity for the injunction is greater in the latter case.

An apt illustration of the effect of a possible sale of the collateral is afforded by a reference to the $40,000,000 Secured 4½% Gold Bonds Series A due September 1, 1952, of the principal debtor, which are secured by a pledge as collateral of $45,000,000 First and Refunding Gold Bonds of the principal debtor (Petition No. 11, R. 28: par. 2, R. 30). The current market quotation of these First and Refunding 4% Gold Bonds is approximately 16, or a total market value for the $45,000,000 collateral of $7,200,000. If the Trustee of the Indenture securing the Secured 4½% Gold Bonds should be permitted to sell the $45,000,000 collateral, at the present prices, it would realize thereon the sum of $7,200,000, which it would thereupon credit upon the face of the debt now standing at $40,000,000, plus interest since September 1, 1933. If it applied the proceeds entirely against the principal of the debt, it would have a deficiency claim against the trust estate for $32,800,000. In addition, the purchasers of the $45,000,000 Refunding Bonds could insist that their bonds be dealt with in the reorganization plan; so that, instead of a claim against the trust estate for $40,000,000 and interest, there would be a deficiency claim of $32,800,000 by the Trustees of the Indenture, and claims by the bondholders aggregating $45,000,000, or a total of $77,800,000, an increase of $37,800,000 in the claims against the trust estate resulting

from the mere fact of the sale of the collateral securing this one series of Debentures. From a practical standpoint, no better illustration can be offered of the effect on the trust estate of permitting secured creditors to dispose of their collateral.

Or take the banks' own case, as set out in their brief. On page 7 of the banks' brief, it is shown that for obligations now standing at $3,866,923.34 the banks hold collateral of a face value of $14,409,000. On page 12, it is shown that the market value of this collateral as of January 12, 1935, was $2,389,980, or about $1,500,000 below the amount of the banks' claim. If now the banks are permitted to sell their collateral, they may prove a claim for the deficiency of $1,500,000, which must be taken care of in the reorganization plan; and, in addition, the purchasers of the collateral may prove secured claims based thereon aggregating $14,409,000; an increase of $12,043,000 in the claims against the trust estate. The same is true of the Reconstruction Finance Corporation loans. For loans aggregating some $13,000,000, the Reconstruction Finance Corporation has collateral of a face value of about $40,000,000 or more; consisting of bonds of the principal debtor, of several of the subsidiary debtors, and First Mortgage Bonds of subsidiary companies, all constituting first liens on terminal or other properties used in the operation of the trust estate (R. 38). The unlisted collateral has no quoted market value, but the principle is the same. No matter on what basis it was sold, if it should be sold, the result would be a large increase in the provable claims against the trust estate.

The Reconstruction Finance Corporation brief states (p. 97):

> "The Court will, we believe, take judicial notice of the fact that a railroad reorganization is essentially a bargaining process between creditors and security holders. The result turns largely on the position of the respective parties. A mortgagee able to foreclose has one position. A mortgagee unable to foreclose has another. A note holder, separated by injunction from mortgage collateral, has almost no bargaining power at all, and may be dealt with lightly in the timing of the reorganization or in ultimate distribution of new securities. These considerations are particularly compelling in the case at bar. Here the short-term debt is so large that it is hardly conceivable that the short-term debt can be paid off in cash on reorganization."

This line of reasoning ignores entirely the function to be played by the Interstate Commerce Commission in the consideration of a plan of reorganization. It certainly does not afford any ground for overthrowing the injunction.

V.

Sundry Objections.

1. *The Fifth Amendment.*

We do not consume the Court's time with a discussion of the Fifth Amendment. The quotation above (p. 12) from *Nebbia* v. *New York* is a complete answer to the contentions of petitioners. The reports are full of cases where contract rights have been interfered with by legislation under the bankruptcy power, the power to regulate commerce, and every other power that is conferred upon Congress.

2. *Considerations of economic policy.*

The Reconstruction Finance Corporation devotes quite a chapter to this subject. (Brief, p. 70). This matter, however, is not for the court. As the court has said many times, the question of policy is for the legislature. It may be presumed that the Interstate Commerce Commission, in passing upon a reorganization plan, is equipped to and will give such consideration to the economic policy involved as the circumstances may require.

3. *Voting in two classes.*

The Reconstruction Finance Corporation (Brief, p. 91) says that since the pledged bonds must be treated as outstanding for the purposes of the approval of the plan, a sale of the pledged bonds would not amount to a shifting of the classes of creditors in such a way as to affect the plan. The Reconstruction Finance Corporation, at page 91 of its brief, states:

> A. *Under Section 77, the pledged bonds must be treated as outstanding for the purposes of the approval of the plan, and hence there can be no such shifting of classes of creditors or such changes in the size of the various classes of creditors as will prevent the preparation and effectuation of a plan.*

Since it is easily demonstrable that a sale of the collateral would affect a change "in the size of the various classes of creditors," as represented by the amounts of their claims, by increasing the obligations of the trust estate in the sum of approximately $200,000,000, the effect of such a shifting upon the preparation of a reorganization plan is obvious; but the suggestion that the holder of pledged collateral is entitled to vote upon the plan, first,

as the holder of a secured note, and, second, in each class of creditors of which he happens to hold the securities as collateral, is novel. It will be met, of course, when the time for voting arrives, but, if it is permitted, it will be the first time in any bankruptcy proceeding that a creditor is allowed to vote twice, first, on his claim, and then on his collateral.

4. *Section 5 of the Reconstruction Finance Corporation Act.*

This is the section which authorizes the Reconstruction Finance Corporation to liquidate collateral accepted by it as security for loans. The Reconstruction Finance Corporation contends that, by reason of this section, the court is powerless in a proceeding under Section 77 to restrain such liquidation (R. F. C. Brief, p. 65).

Section 5 is simply a grant of charter power, similar to that granted to national banking associations by the National Banking Act (U. S. C. A., Title 12, Sec. 24). But this charter power to liquidate pledged securities must be exercised according to law, including the law contained in Section 77.

Respectfully submitted,

MARCUS L. BELL,
WM. F. DICKINSON,
WM. F. PETER,
Attorneys for Respondents,

FRANK O. LOWDEN,
JAMES E. GORMAN,
JOSEPH B. FLEMING,
Trustees in Bankruptcy.

(NOTE: Italics supplied throughout.)

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No opinion was rendered by the District Court, but the grounds of its decision appear in its order (R., pp. 103-104).

The opinion of the Circuit Court of Appeals (R., pp. 313-326) is reported in 72 F. (2d) 443.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

IN PROCEEDINGS FOR THE REORGANIZATION OF THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Debtor.	
CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY, *et al.*, Petitioners, *v.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*, Respondents.	Nos. 479-488.
RECONSTRUCTION FINANCE CORPORATION, Petitioner; *v.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *et al.*, Respondents.	Nos. 489-490.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF FOR BONDHOLDERS PROTECTIVE COMMITTEES, RESPONDENTS.

Preliminary Statement.

This is a proceeding to review an order of the United States District Court for the Northern District of Illinois,

entered November 22, 1933 in proceedings under Section 77 of the Bankruptcy Act for the reorganization of The Chicago, Rock Island & Pacific Railway Company, Debtor, and certain subsidiary companies, also Debtors. The order enjoined the R. F. C. and five Banks, pending the further order of the Court, from selling $54,711,465 of mortgage bonds of the Rock Island System, secured by System properties, held by them as collateral security for $17,784,877 of promissory notes of the Debtor, on the ground that such injunction was necessary to permit the preparation and carrying out of a plan of reorganization under Section 77. It was entered on the application of the Debtor supported by respondent Bondholders Protective Committees. The order was unanimously affirmed by the Circuit Court of Appeals for the Seventh Circuit on July 23, 1934. The case comes before this Court on writs of certiorari granted December 3, 1934.

This brief is filed on behalf of three respondent Bondholders Protective Committees which are parties to the reorganization proceeding.

One of these Committees, the Committee for the First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds, of which Mr. Dwight S. Beebe of The Mutual Life Insurance Company of New York is Chairman, represents the largest interest in the Rock Island System. There are outstanding in the hands of the public $104,470,000 of the First and Refunding Bonds, and $40,000,000 of the Secured 4½% Bonds (secured solely by pledge of $45,000,000 First and Refunding Bonds), and more than 50% of each issue has now been deposited with the Committee by almost 6,000 bondholders.

Another of these Committees, of which Mr. Ralph Wolf, formerly of Speyer & Co., is Chairman, represents the Convertible Gold Bonds, an unsecured issue, of which $32,288,000 of bonds are outstanding. The Committee has powers of attorney from the holders of substantial blocks of this issue.

The third Committee, of which Mr. Alfred H. Meyers of the New York Life Insurance Company is Chairman, represents the Consolidated First Mortgage Bonds of the Burlington, Cedar Rapids & Northern Railway Company secured by first mortgage on over twelve hundred miles of railroad now owned in fee by the Rock Island. Of this issue, $11,000,000 of bonds are outstanding in the hands of the public and $8,405,000 are pledged with the Trustees for the Rock Island's First and Refunding Mortgage. The Committee now has on deposit about 80% of the outstanding bonds of the issue.

Summary of Argument.

These respondent Committees make two affirmative points:

Point I. The courts below properly found that the injunction forbidding the sale of the collateral in question was **necessary** for the enforcement of the provisions of the Bankruptcy Act, and that the threatened sale of the collateral would prevent the consummation of a plan of reorganization under Section 77 of the Bankruptcy Act,—such reorganizations being the sole purpose of that section.

Point II. The Bankruptcy Court has power under Clause (15) of Section 2 of the Bankruptcy Act [11 U. S. C. A. §11 (15)] to issue such an injunction when it is **necessary** for the enforcement of the provisions of Section 77 of the Bankruptcy Act.

The remaining points in this brief are in reply to points made by the petitioners:

Point III will deal with the petitioners' claim that there are sections in the Bankruptcy Act and the Reconstruction Finance Corporation Act inconsistent with the decision below.

Point IV will deal with the petitioners' claim that the injunction was not properly issued in a summary proceeding.

Point V will deal with the petitioners' claim that the construction of the courts below was repugnant to the Fifth Amendment.

Point VI will deal with the claim of the petitioners that the court lacked jurisdiction to enjoin the three non-resident banks.

Point VII will deal with certain economic considerations urged by the petitioners.

ARGUMENT.

POINT I.

The Courts below were right in finding that the injunction order was necessary to permit the carrying out of the purpose of this reorganization proceeding under Section 77.

On June 7, 1933, the Chicago, Rock Island & Pacific Railway Company initiated under Section 77 [11 U. S. C. A., §205] of the Bankruptcy Act a reorganization proceeding in which a number of subsidiary railroad companies of the System shortly thereafter joined, all for the sole purpose of effecting a plan of reorganization of the Rock Island System* (R., pp. 2-5, 23-28, 92-99).

At the inception of the reorganization proceedings, the Rock Island System had outstanding $312,365,885 of funded debt, $17,784,877 of secured loans from the five Banks and the R. F. C., and $128,909,211 of preferred and common stocks (R., pp. 87-88), making a total of $459,059,973 of capitalization to be provided for in the reorganization plan, if the *status quo* were maintained.

But there were pledged an additional $200,460,515 of mortgage bonds and capital stock of the System as follows: $54,711,465 of Mortgage Bonds of the System with the Banks and the R. F. C. as security for the $17,784,877 of loans referred to above; $66,495,000 of Mortgage Bonds and $30,244,050 of capital stock of the System with the Trustees for the First and Refunding Mortgage; $45,000,000 of Mortgage Bonds of the System with the Trustee for the Secured 4½% Bonds; and $1,365,000 of Mortgage Bonds and

* That the sole purpose of this proceeding under Section 77 is to effect a reorganization of the Rock Island System is clear from a reading of the first and sixth sentences of Section 77, subdivision (a), and also from Clause 7 of subdivision (c) of Section 77, which provides that if a plan of reorganization is not proposed, accepted and confirmed within a reasonable time, the Court may dismiss the proceeding.

$2,645,000 of capital stock of the System with the Trustees for the General Mortgage (R., pp. 66-67).

Thus, if sales of this System collateral should be permitted to take place, the capital structure of the Rock Island System to be taken care of in the reorganization plan was subject to unpredictable expansion from time to time to the extent of an additional $200,000,000, or from an original capital of $459,000,000 to an expanded capital of up to $659,000,000, less any proceeds of the sales, which would be relatively small.

When the application was made, there was imminent danger of the sale of the pledged System collateral. Each of the collateral notes held by the R. F. C. and the Banks contained provisions that the holder might, **without notice,** at public or **private** sales, sell the collateral securing the same **to itself** or others (1) if the Railway Company should become insolvent, however such insolvency might be evidenced, or (2) if a receiver should be appointed of any of the property or assets or any part thereof of the Railway Company, or (3) if interest on the notes should not be paid when due (R., pp. 45, 46). Furthermore, the notes held by the Banks provided that a default in the payment of interest on the notes held by the R. F. C. would amount to a default in the notes held by the Banks (R., p. 40).

Two of these "events of sale" had occurred at the time of the application and the third was imminent. That is, (1) the Debtor had filed its petition under Section 77 stating that it was unable to meet its debts as they matured (R., p. 4), (2) the Court had entered an order taking the property of the Railway Company into the custody of the Court (R., p. 6), and (3) the funds in the hands of the Debtor and the earnings of the trust estate were not sufficient to provide for the interest on its senior mortgage bonds and the notes held by appellants (R., pp. 41, 42). Therefore, so far as the provisions of the collateral notes were concerned, the right of sale of the collateral existed and the danger of sale was imminent.

It was pointed out to the District Court that a decision that the R. F. C. and the Banks could not be enjoined from selling the $54,711,465 face amount of collateral held by them, would also determine that the Trustees of the three bond issues would have the right to sell (upon defaults under their indentures) the $145,749,050 total face amount of capital obligations of the System pledged with them, making a total of $200,460,515 of capital obligations of the System not now outstanding but free for sale at a fraction of face value (R., p. 67).*

Why any of the petitioners should contend that the decision upon this application will not determine whether the trustees for the bond issues are free to sell their collateral is difficult to understand. If the petitioners here cannot be enjoined, the bond issue trustees cannot be enjoined. If the petitioners here are enjoined, the Road's Trustees may apply for a similar injunction against the indenture trustees. While the order of the District Court did not enjoin the bond issue trustees from selling their collateral, it was because no application was made therefor; but the collateral held by the trustees was described in detail in the findings of the Court's order (R., p. 103), and the right, upon application, to enjoin them from selling it was expressly reserved in the Court's order (R., p. 104). Furthermore, the two bond issues under which substantially all ($141,739,050) of this additional collateral is pledged, are represented here on this appeal by the respondent Committee for the First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds. Obviously, if this

* Notwithstanding that $141,739,050 of the above collateral was held to secure the two bond issues represented by the Committee for First and Refunding Bonds and Secured 4½% Bonds, that Committee supported the application and took the position that the interests of the bondholders it represented and of all of the creditors and of the Debtor's estate generally would best be served, and that the policy underlying the new Section 77 of the Bankruptcy Act would best be carried out, by a decision, the principle of which would show that the holders of claims secured by capital obligations of the System could be required to retain their collateral until a plan of reorganization could be prepared, approved and put into effect (R., p. 67).

injunction was properly obtained, a similar injunction can be obtained against the sale of the collateral under the two bond issues.*

All of the bonds comprised in petitioners' collateral are obligations of the Rock Island System secured by System properties. The petitioners draw some distinctions between blocks of the bonds in their collateral, and point out that some of them are not primary obligations of the Debtor. But all of the $54,711,465 of bonds pledged with the R. F. C. and the Banks are Rock Island System obligations secured on System properties. Some of the bonds held as collateral are direct obligations of the Principal Debtor, Chicago, Rock Island & Pacific Railway Company, others are indirect obligations of the Chicago, Rock Island & Pacific Railway Company, and some are obligations of subsidiaries which are either Debtors in this proceeding or would be forced to become such if these obligations of theirs were to be sold and become outstanding as primary obligations of the System.†

This bond collateral is divided into two classes—some is listed on the New York Stock Exchange and the balance is unlisted. The Debtor's application for the injunction

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* The contention of the R. F. C. that there is no proof before the Court of the fact that $145,749,050 of bonds and stocks of the Debtor's System were pledged with the Trustees for Debtor's bond issues is insubstantial, and the remark in the brief of the R. F. C. (p. 31) that no bond issue indentures were ever submitted to the Court is contrary to fact.

That such System bonds were pledged under such bond issues was directly alleged in the affidavit of Dwight S. Beebe (R., pp. 66, 67). While it was alleged "on information and belief," it was not controverted because a matter of record. Such allegations on information and belief are quite proper and customary in summary proceedings and must be taken as true unless controverted.

So far as concerns the statement of the R. F. C. that no bond issue indentures were ever submitted to the Court, the stenographic record of the proceedings in the District Court show that two indentures were submitted at the hearing on October 24, 1933, at which counsel for the petitioners herein were present. Furthermore, the Court was obviously familiar with the terms of the bond issue indentures with which it was constantly dealing in the proceedings and the collateral thereunder.

† There was pledged, in addition to these bonds, a claim estimated at $1,400,000 against the Railroad Credit Corporation which has been conceded throughout the proceedings below not to be a System obligation of the Rock Island.

stated, "All the [R. F. C.'s] unlisted collateral referred to above consists of First Mortgage Bonds of subsidiary companies of the Debtor's system" (R., p. 38).* Previous petitions of the Debtor had shown that the R. F. C.'s listed collateral, and all the collateral held by the Banks consists solely of (1) First and Refunding Mortgage Bonds of the Rock Island itself, (2) St. Paul & Kansas City Short Line First Mortgage Bonds guaranteed as to principal and interest by the Rock Island itself (R., p. 20), and (3) Rock Island, Arkansas & Louisiana First Mortgage Bonds, guaranteed as to principal and interest by the Rock Island itself (R., p. 4).

To have left the collateral free for sale would have prevented reorganization. It is obvious that a plan of reorganization which would take care of a readjustment of an outstanding capitalization of $459,000,000 would not take care of an unpredictable, but substantially increased, capitalization ranging up to $659,000,000, which would result from sales at fractions of their face amounts of all or portions of the $200,000,000 total of capital obligations of the System held as collateral.

Under Section 77 the plan must first be prepared by an authorized party, submitted and argued with any other plans before the Interstate Commerce Commission, approved by the Interstate Commerce Commission, assented to by two-thirds of each class of the creditors and stockholders, and approved by the District Court. The plan must then be put into effect through conveyances and the preparation, execution and issuance of new mortgage indentures, mortgage bonds, charter amendments and new stock certificates. Sales of blocks of the $200,000,000

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* It is to be noted that as to most of this unlisted collateral held by the R. F. C., the Interstate Commerce Commission said in its Report approving the loan made by the R. F. C. thereon:

> "The applicant states that all of the aforesaid collateral consists of first-mortgage bonds representing the only existing liens upon railroad and terminal properties in important cities used by and in the interest of the applicant and essential to the operation of its railroad system" (App. to Brief for R. F. C., p. 37; 184 I. C. C. 597).

of capital obligations of the System now held as collateral might take place from time to time while attempts were being made to prepare a plan of reorganization, to obtain the approval of the Interstate Commerce Commission, the assents of creditors and stockholders and the approval of the District Court, and to put the approved plan into effect. Each sale would require a modification of the plan, result in a change in the classes of claimants theretofore fixed by the Court, whose assents must be obtained to the plan, and nullify any proceedings on the plan theretofore taken before the Interstate Commerce Commission and the Court and also nullify assents by creditors and stockholders to the plan theretofore obtained.

The fundamental reason why sales of collateral consisting of obligations of the Debtor railroad System would prevent the reorganization of the System under Section 77 through the preparation, approval and carrying out of a plan of reorganization, is that the terms of the plan must give specific consideration to two definite factors: (1) the amount and classes of outstanding indebtedness and capitalization of the System, and (2) the figure taken as the assumed normal earning power of the System which is to support the new capital structure. The plan must definitely provide for new securities to replace all outstanding indebtedness and capitalization of each class, except that, of course, one or more senior issues not in default might be left undisturbed. The specific classes and amounts of securities to be outstanding after the plan is put into effect must be set up in the plan so as to take care of all theretofore outstanding securities of each class, and the new securities must be in such classes and amounts and have such terms that the figure taken as the assumed normal earning power will service them, otherwise it will be impracticable to set up, obtain assents to, and carry out a workable plan. Accordingly, even to perform the initial task of preparing a workable plan, it is necessary to know definitely the amount and classes of outstanding securities

which must be taken care of with the new securities, of types and with terms which can be serviced with this assumed earning power; and such outstanding securities can therefore not be subject to unpredictable shifts. Such unpredictable shifts would occur through the sale from time to time of blocks out of the total of $54,711,465 of the varied classes of System securities held as collateral by the petitioners, and also through the sale from time to time of blocks out of the total of $145,749,050 of the varied classes of System securities held as collateral for the bond issues.

Thus, if blocks of the $200,460,515 of System obligations securing the indebtedness held by petitioners and the trustees for the bond issues may become outstanding from time to time, it would be impracticable to prepare, obtain assents to, and put into effect a workable plan of reorganization.

And even the bare increase in the capitalization of the Rock Island System from $459,000,000 now outstanding to $659,000,000, which would result from the sale of the collateral without the receipt of any adequately compensating consideration therefor (due to the bankruptcy of the Debtor), would disastrously affect the acceptability to the creditors and stockholders whose assent thereto is necessary of any plan designed to take care of this expanded and diluted capitalization.

The R. F. C. argues that the pledged bonds are already "outstanding" and that there would therefore be no increase in the debt structure of the Rock Island as a result of their sale. But pledged bonds are not "outstanding" from the standpoint of the Rock Island System, which is the only sense in which we have here used the term; and the argument disregards the fact that while the pledged bonds are in the hands of the pledgees, the recovery on the primary debt *plus* the collateral is limited to the amount of primary debt, and overlooks the established rule that a creditor holding mortgage bonds of a debtor as collateral may not prove in bankruptcy on the promise contained in the

collateral bonds but only on the primary promise,—in other words, that in the pledgee's hands the collateral bonds in bankruptcy represent only a share in the mortgaged property of the debtor, the covenant to pay contained in the collateral bonds being given no effect. *In re Battle Island Paper Co.*, 259 Fed. 921 (D. C. N. D. N. Y., 1919). An extended discussion of the rule appears in *Hitner* v. *Diamond State Steel Co.*, 176 Fed. 384 (C. C. D. Del., 1910), an equity receivership case. On the other hand, on bonds really outstanding as primary indebtedness, the creditor realizes not only on the security but also on the covenant to pay.

The R. F. C. argues that, in the plan of reorganization, the obligations of the System which are now pledged will have to be taken care of by new securities in the same way, whether they are retained or sold (R. F. C. brief, p. 90). So far as this means that the holding by the R. F. C. and the Banks of the $54,711,465 of collateral securing the $17,784,877 of indebtedness must be fully recognized in the plan of reorganization, this is not only conceded, but asserted, by the Committee for the First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds on behalf of the holders of the Bonds it represents for which $141,739,050 of capital obligations of the System are pledged. But the point is that all such collateral would have to be recognized in quite a different way if it is sold from the way in which it will be recognized if it is retained.

For example, if the R. F. C. and the Banks retain their collateral, not more than $17,784,877 in securities need be provided under the plan to retire these loans and take up the $54,711,465 of collateral. Their holdings of the $54,711,465 of collateral is nevertheless recognized in that it insures to them that they will receive better treatment than that accorded general creditors or poorly secured creditors of the System. But, if the R. F. C. and the Banks finally sell all their collateral, and even if it is assumed that the sales yield $17,784,877 and pay off the indebtedness

owed to them, the fact that the $54,711,465 of the System's obligations will have become outstanding in place of the $17,784,877 will require that, in order to recognize this collateral, up to $54,711,465 in lower grade securities must be provided in the plan of reorganization in place of $17,784,877 in cash or securities. This situation is, of course, magnified enormously in the similar situation existing with respect to the $145,749,050 of collateral of the System held by the Trustees for the outstanding bond issues.

The amounts of new securities which must be provided in any plan will be subject to enormous increase if the collateral is sold. It is almost equally important to point out that the kinds of new securities to be specified would be quite different. For example, if the $54,711,465 of heterogeneous R. F. C. and Bank collateral should become outstanding, the kinds of securities which must be issued to take them up in the reorganization will obviously be entirely different from the one class of security (or cash) which would be set up in the plan to retire the $17,784,877 of R. F. C. and Bank loans which are now secured by such $54,711,465 of collateral and to return such collateral to the Debtor. How can a definite plan be prepared, approved under the machinery of the Act, and carried out if a vastly greater amount of capital obligations of the System may become outstanding through sales from time to time of this collateral and the collateral held under the bond issues, when the new securities set up in the reorganization plan—the base of the whole plan—must increase in amounts and must change in kinds to provide different new securities which may be serviced by the assumed normal earnings and still be appropriate for offering in exchange for the shifting and new classes of system obligations?

The impracticability of preparing, obtaining assents to, and carrying out the plan, which flows from the continuing uncertainty as to when and what portions of such great mass of collateral of different classes will be sold, cannot be waved aside. Such sales might come in the course of

the preparation of a plan, or after a plan was formulated and being argued before the Interstate Commerce Commission, or after the Interstate Commerce Commission had approved a definite plan and assents thereto were being sought, or even after the Court had approved the plan and before it was consummated. The sales would destroy any such previously taken proceedings in two ways, viz.: (1) The sale of pledged bonds of an issue, no part of which is already outstanding in the hands of the public as primary debt, would create an entirely new and additional class of creditors, not only requiring a change in the plan to provide additional new securities to be offered in exchange, but also requiring obtaining the assent to the plan of the holders of this newly outstanding issue; and (2) the sale of pledged bonds of an issue, a portion of which is already outstanding in the hands of the public as a primary debt, not only would require a change in the plan to provide additial securities to be offered in exchange for these newly outstanding bonds, but would also expand this class of creditors, the assent of two-thirds of which must be obtained to the plan. Therefore, it seems obvious that freedom to sell this collateral is a menace to the whole proceeding.

The petitioners try to overcome this insuperable mechanical difficulty by contending that all the pledged bonds, although still held by the pledgees, must be counted in voting as if already outstanding as primary debts. They argue that therefore the sale of the pledged bonds will make no change in the classes of creditors from whom assents to the plan are required. For example, the petitioners would contend that the Rock Island & Dardanelle Railway Company First Mortgage Bonds, the entire issue of which is pledged with the R. F. C., already constitute a separate class of bonds, the holders of which must assent to the plan. This position is untenable. Petitioners' vote on the plan would simply be to decide whether to accept cash or high grade securities in exchange for their $17,784,877 of notes,

together with the collateral in which the Rock Island & Dardanelle Bonds are included, whereas the vote on the plan of a purchaser of the bonds from the petitioners would be to decide whether to take some different security in substitution solely for his Rock Island & Dardanelle Bonds.

Petitioners would likewise contend that the pledged First and Refunding Mortgage Bonds of the Rock Island itself, only a part of which issue is pledged, are now part of the class of such bonds consisting of the publicly held First and Refunding Bonds outstanding as primary debts, and that the holders of both the pledged and outstanding blocks of such issue together comprise the class whose assents must be obtained to the plan. This also is untenable. It would mean that pledgees of bonds of an issue with only a qualified pledge interest therein might control the entire class of holders of bonds of such issue who might, and probably would, have interests diametrically opposed to those of the pledgees. For example, take a debtor railroad system which has outstanding in the hands of the public $30,000,000 of first mortgage bonds and $100,000,000 of second mortgage bonds under which are pledged $70,000,000 additional of such first mortgage bonds as collateral. If the construction contended for by the petitioners were correct, the holders of the second mortgage bonds would vote in both classes of creditors and control by two-thirds vote what the public holders of $30,000,000 of first mortgage bonds would receive in the reorganization. This would be so, notwithstanding that the interests of the holders of bonds of the two issues outstanding in the hands of the public were necessarily conflicting.

The facts of this supposititious case are similar to the situation which exists in the Rock Island proceeding, where $38,400,000 of General Mortgage Bonds (a first mortgage), out of $99,981,000, are pledged under the First and Refunding Mortgage (which is junior to the General Mortgage on the property covered by the General Mortgage). If the pledged $38,400,000 of General Mortgage Bonds are in

the same voting class as the $61,581,000 of General Mortgage Bonds outstanding in the hands of the public, the First and Refunding Mortgage bondholders can combine their votes in respect of the $38,490,000 pledged General Mortgage Bonds with the votes of the holders of only $28,254,000 outstanding General Mortgage Bonds to make two-thirds of the total issue and force the holders of $33,327,000 of outstanding General Mortgage Bonds, constituting a **majority** of the outstanding General Mortgage Bonds, to take new securities wholly unacceptable to them. This is certainly not contemplated by Section 77, nor can any provision be found therein justifying such a construction. In fact, a pledgee holding obligations of the debtor as collateral is not a creditor in respect of such obligations, but only in respect of his primary debt. He receives the benefit of his collateral under Section 77 by being placed in a separate class of secured creditors on account thereof. His own class must either approve what the plan offers by two-thirds in amount or be paid off in cash.

In view of the unsupported statements made by the R. F. C. (R. F. C. brief, p. 96), particularly in the Courts below, that railroad systems have been regularly reorganized in equity with collateral loans outstanding and without injunctions against the sale of the collateral, we had a statistical study of the subject made. The results of the study show that only ten major railroad systems of the country (that is, of 1500 miles or more) have been in receivership **and have been reorganized** since 1910; and that in these ten cases there were no collateral loans or the collateral loans were of such a minor nature that they constituted no real factor in reorganization. This disposes of the assumption made by the R. F. C. which is unsupported by statistics of the history of railroad reorganizations. There is no showing that, at least since 1910, any major railroad system has been reorganized with any substantial collateral loans outstanding with the collateral free for sale. And the R. F. C. now concedes in its brief in this

Court (pp. 96-7) that the secured bank loans of railroads which have been reorganized in recent years were materially less than the petitioners' collateral loans in this case.

The Findings of the Courts below. On these facts and under these circumstances the District Court expressly found in its order that the issuance of the injunction was necessary to carry out the purposes of the reorganization proceedings, as follows (R., pp. 103-104):

> "* * * that the facts set forth in the petition of the Debtor, and in said affidavit of Dwight S. Beebe are true and accurate;
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> "And it appearing to the Court that collateral owned by the Debtor of an aggregate face value of approximately $54,000,000, consisting of obligations of the Debtor and of subsidiary corporations, secured by mortgage lien upon properties constituting part of the Debtor's system of railroads, is pledged with the said Reconstruction Finance Corporation and said banks to secure indebtedness due March 1, 1934, aggregating approximately $17,784,877.58;
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> "And it further appearing that approximately $66,495,000 face amount of bonds of the Debtor and of subsidiary companies of the Debtor's system of railroads, and $30,244,050 face amount of capital stock of said subsidiary companies, are pledged under the Debtor's First and Refunding Gold Bond Mortgage; and that $45,000,000 face amount of the Debtor's First and Refunding Mortgage 4% Gold Bonds are pledged under the Indenture securing the Secured 4½% Gold Bonds of the Debtor, and that $1,365,000 face amount of bonds and $2,645,000 face amount of capital stock of subsidiary companies of the Debtor's system are pledged under the General Gold Bond Mortgage of the Debtor;
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> "And it further appearing that each of the said collateral notes contains provisions that if the Rail-

way Company shall become insolvent, however such insolvency may be evidenced, or if a receiver shall be appointed of any of the property or assets, or any part thereof, of the Railway Company, or if interest thereon be not paid when due, the holders thereof may sell and dispose of the collateral securing the same; and that there is danger that the holders of said notes will claim that one or more of the events entitling them to sell said collateral have occurred;

"And it further appearing to the Court that a sale of the said collateral, or any part thereof, by the Reconstruction Finance Corporation, or by the said banks, would be inconsistent with the purposes of Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, and would hinder, impede, obstruct, delay, and in effect prevent the orderly preparation and consummation of a plan of reorganization of the trust estate under said Section 77, which is the sole purpose of said Section 77, under which these proceedings are now pending;

"And it further appearing that, under the provisions of Paragraph (a) of said Section 77, this Court, having approved the Debtor's petition, has during the pendency of these proceedings exclusive jurisdiction of the Debtor and its property, wherever located; and that under paragraph 15 of Section 2 of the Acts of Congress relating to bankruptcy, this Court has power to make such orders, issue such process, and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of the said Acts of Congress relating to bankruptcy;

"And it further appearing that it is necessary for the enforcement of the provisions of Section 77 that the said holders of said collateral be enjoined and restrained from selling or disposing of the same,

or any part thereof, pending the preparation and consummation of said reorganization plan;'"*

The Circuit Court of Appeals in all respects confirmed these findings of the District Court, saying (R., pp. 323-325):

"Surely, we are justified in giving to the amendment a liberal construction, one that is consonant with the purposes of this remedial legislation. That which distinguishes this section from the old act —the gist of the change evidenced by this amendment, that which makes it effective—is the provision which calls for a plan of reorganization. It calls not for a sale of assets and a discharge of the debtor, but for a plan of reorganization wherein the indebtedness and capital structure are changed (usually reduced) so that the debtor may live and the creditors will receive more than is obtainable upon a liquidation sale. The consummation of a fair and equitable plan of reorganization is the goal of the legislation. How could a plan of reorganization be perfected unless the courts restrained creditors and lienholders from proceeding in a manner which would defeat the consummation of said plan?

"In the instant case some fifty-four millions of dollars of the debtor's and its subsidiaries' bonds were hypothecated with creditors whose claims were scarcely one-third that amount. To successfully reorganize, it is necessary to take care of the funded indebtedness amounting to approximately two hundred and eighty millions of dollars. If, in addition thereto, fifty-four million dollars of bonds were beyond the control of the court, it would be quite impossible to proceed with any reorganization."

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* The implied complaint of the petitioners that the District Court wrote no opinion is obviously ill founded in view of these specific findings and the grounds set forth therein.

"Our conclusion is that the restraining order is an exercise of authority on the part of the court which was **necessary** to the effective use of the powers expressly conferred by Congress through this amendment. • • •

"Upon the record before us we cannot say that the sale of the collateral by the pledgees will not defeat the purposes of Section 77. On the other hand, we agree with Judge Wilkerson that the facts called for an exercise of discretion on the part of the court in favor of the moving parties.

"The first impression might well be to the effect that the statement of appellants that they did not contemplate the sale of the securities obviated the necessity of an injunction. Such assurance by the creditors, however, was limited to a very short period —five days. The consummation of a reorganization plan of a railroad of the magnitude of the debtor, during which time the claims of the conflicting parties and interests must be considered, necessitates not five days but a much longer period, the exact duration of which cannot be prognosticated. Without some control over the disposition of $54,000,000 of bonds which have been hypothecated to secure nearly $18,000,000 of indebtedness, the presentation of a satisfactory plan of reorganization might as well be abandoned."

Thus the District Court found that the injunction was necessary in order to effect an orderly reorganization (R., p. 103), and this finding was unanimously approved and reiterated by the Circuit Court of Appeals (R., pp. 324-5).

This finding that the injunction was necessary was a finding of **fact**, even though it was an inference based upon undisputed primary facts.

Boehmer v. *Pennsylvania R. R. Co.*, 252 U. S. 496 (1920).

It was supported by evidence, and in view of the concurrence of the two courts below, should be accepted as conclusive by this court unless clearly erroneous.

United States v. *Commercial Credit Co.*, 286 U. S. 63 (1932);
Washington Securities Co. v. *United States*, 234 U. S. 76, 78 (1914).

This is particularly so since the District Court, having had jurisdiction of the proceedings under Section 77 of the Bankruptcy Act since the institution thereof, had a background of knowledge of the financial structure and affairs of the Rock Island System relevant to the necessity for the injunction, which no other Court could have. As was said by this Court in *Boehmer* v. *Pennsylvania Railroad Company*, 252 U. S. 496, 498 (1920), *supra*, when a matter depends on appreciation by the courts below of peculiar facts and the two courts below have agreed, this Court will not enter upon a minute analysis to overthrow their judgment.

It has already been shown that the findings of the District Court and of the Circuit Court of Appeals were right, and it will be briefly shown below that they did not even make any minor errors of fact, as petitioners contend.

The Circuit Court of Appeals made no errors of fact. Before concluding this discussion of the facts which were passed on by the courts below showing the necessity for the issuance of the injunction, it is pertinent briefly to point out that the Circuit Court of Appeals made no errors of fact as contended by the petitioners and also that, on their face, the statements of the Circuit Court of Appeals with which petitioners quarrel were not necessary to its decision.

(1) The R. F. C. and the Banks refer to the statement of the Circuit Court of Appeals that "appellants have received and will probably continue to receive the prompt payment of interest" (R., p. 325). This is really two statements, one of fact and one of mere surmise. The Court

has already reached its decision in the opinion before this sentence appears. As to the statement that the appellants have received interest, the Court was obviously speaking from the record and the record shows what was the fact, that interest was paid up to the time of the entry of the order (R., pp. 38, 40 and 77). The statement that the appellants "will **probably** continue to receive interest" is no more than a hope that financial conditions would warrant it and shows no reliance by the Court on continued payments.*

(2) The R. F. C. and the Banks claim that the Court erred in stating that the District Court sought to protect the great mass of the Debtor's creditors "without injuring the position of appellants" (R., p. 325). They claim that they were injured, and in support of this claim petitioners then give quotations of sales on the New York Stock Exchange of a few scattered bonds of some of the same issues, large blocks of which are pledged with them.

The argument based on these market quotations is fallacious. The loans were not short-term quick bank loans and were not made on the basis of market values of the bonds held as collateral but rather on the value of the System properties underlying the mortgage bonds comprised in the collateral (See Point VII, p. 71, *infra*).

Moreover, a reading of the opinion shows that what the Court meant was that the position of the petitioners in respect of their rights to retain and be secured by their collateral was not affected, which was correct.

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* In a footnote on page 73 of their Brief, the Banks say that they can receive no income from the pledged collateral because "the District Court authorized the Debtor's Trustees to refrain from paying the interest due" on the Short Line Bonds and the Debtor's First and Refunding Bonds. From this the impression might be formed that the orders referred to were specifically directed against the petitioners' receiving any distributions on the collateral pledged with them. But the fact is that the said orders applied to all the Debtor's outstanding bonds of those issues, whether pledged or not. Since the date of those orders, there have been some distributions on bond issues represented in the pledged collateral and the petitioners received the amounts applicable to such of these bonds as were pledged with them (R., p. 342), and will continue to receive their pro rata share of all distributions made on bond issues represented in their collateral.

Finally, if the R. F. C. and the Banks had considered that they had been injured in their substantive rights by the injunction order, they could have brought on their appeal to the Circuit Court of Appeals, their application for certiorari and the hearing on the merits in this Court in a few months instead of a year and a quarter.

(3) The petitioners claim that the Circuit Court of Appeals was wrong when it said:

> "The controversy was restricted to a restraining of the immediate pursuit of a remedy by the creditors in order that a plan might be presented which would take care of appellants' claims in full but without special and irreparable injury to the other creditors."

The petitioners charge that this statement was erroneous because there was no plan in existence at the time of the argument. Of course, the court never asserted any such thing.

The petitioners also charge that the statement was in error because there was nothing before the court which would warrant the statement that such a plan would "take care of appellants' claims in full." The court made no statement that any plan would take care of the appellants' claims in full. It made, not a statement as to what the plan would do, but of the end which it hoped would be achieved by the injunction,—a very different thing. Whether that end will be actually arrived at, none of us can in the nature of things know until a plan has been prepared and consummated, a process which cannot begin until this court sustains the injunction.

(4) The R. F. C. alone goes to some length to prove that the Circuit Court of Appeals is wrong in saying that *nine* wholly-owned subsidiaries under long term lease to the Debtor joined the reorganization proceedings and says that only six of these nine companies were under long-term

lease, and that three (Rock Island Memphis Terminal Railway Company, Rock Island Omaha Terminal Railway Company and Peoria Terminal Company) were under short-term lease. It contends that this is significant in showing that these three companies are not part of the Debtor's System and their obligations not System obligations. The absurdity of this is shown by the fact that they are all wholly-owned subsidiaries of the Rock Island, which makes it immaterial what the term of the lease may be (R., pp. 92-93).

(5) The R. F. C. contends that the Circuit Court of Appeals was wrong in stating that, if the petitioners' collateral is sold, a plan of reorganization will have to provide for all of the bonds of the Debtor and its subsidiaries comprised in the collateral. It states that three companies whose bonds are comprised in the collateral are not now in the reorganization proceedings, and discusses in considerable detail certain distinctions between different blocks of bond collateral comprised in the total of $54,711,465 face amount. These distinctions are obviously immaterial from the standpoint of this appeal, for we have shown (pp. 8-9) that the bonds held as collateral are all System obligations.*

(6) The R. F. C. alone states that the Circuit Court of Appeals failed to note that a claim against the Railroad Credit Corporation was comprised in the collateral and was not a bond of the System. This petitioner's statement is simply careless in view of the note to the table of collateral contained in the Court's opinion, which refers to this fact (R., p. 316).

* They are all bonds of companies which are debtors in this proceeding except for the bonds of the Rock Island Improvement Company, Trinity & Brazos Valley and Kankakee & Seneca. The Rock Island Improvement Company is a wholly owned subsidiary of the Rock Island which would be immediately forced into the proceeding if any of its obligations became outstanding. The Trinity & Brazos Valley and the Kankakee & Seneca are owned partly by the Rock Island and partly by other roads and have been operated jointly. The petition of the Debtor stated that these companies were subsidiary companies of the Rock Island System (R., p. 38). No evidence to controvert this was submitted by the R. F. C. or the Banks.

In concluding this comment upon the alleged errors of fact in the Circuit Court of Appeals' opinion; it should be pointed out that if the petitioners had considered these alleged errors really to be errors and material to the decision in the minds of that Court, they could have applied for a reargument. This they did not do and thereby showed that they did not think that Court could be induced to change its decision on the ground of these contentions.

Having shown that the issuance of the injunction was necessary to preserve the proceeding we shall now show that the Court had power to issue it.

POINT II.

In a proceeding under Section 77 of the Bankruptcy Act the Court has power to issue an injunction order if necessary to carry out the purposes of the proceeding.

We do not contend that a court in a proceeding under Section 77 has the general power to enjoin the sale of collateral irrespective of its nature and irrespective of the effect of the sale thereof on the reorganization. We contend for the limited principle that in a reorganization proceeding under Section 77 of the Bankruptcy Act, the court has power to issue injunction orders when necessary for the enforcement of the purposes of the Act, that is, reorganization.

We submit that the Bankruptcy Court has power in any type of proceeding under the Bankruptcy Act to issue an injunction order or any other order necessary to enforce the Act and carry out the purpose of that proceeding. Once the necessity is found, the power and jurisdiction to issue the order exists under the express provisions of clause (15) of Section 2 [11 U. S. C. A. §11(15)] of the Act which reads as follows:

> "The courts of bankruptcy • • • are hereby invested, within their respective territorial limits as established on July 1, 1898, or as they may be thereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, • • • to • • • (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be **necessary** for the enforcement of the provisions of this title."

In *Collier on Bankruptcy*, 13th edition, Vol. 1 (1923), pages 107, 108, the following appears concerning clause (15) of Section 2:

> "This is the omnibus clause of the section. Generally speaking, it may be availed of to compel anything which ought to be done for, or to prevent anything which ought not to be done against, the enforcement of the law; provided the court of bankruptcy otherwise has jurisdiction of the person or the subject-matter" (p. 107).
>
> "The power to enjoin is inherent in the court of bankruptcy as a court of equity. • • • That the broad phrasing of subdivision 15 amounts to an express ratification of this inherent power has not been doubted" (p. 108).

Clause (15) of Section 2 has been applied in a wide variety of ways by the Courts in the issuance of orders for the enforcement of the Act.

John Matthews, Inc. v. *Knickerbocker Trust Co.*, 192 Fed. 557 (C. C. A. 2nd, 1911);

In re Purkett, Douglas & Co., 50 F. (2d) 435 (D. C., S. D., Cal., 1931);

New York v. *Irving Trust Co.*, 288 U. S. 329, 331, 333 (1933);

Weil v. *Neary*, 278 U. S. 160, 169 (1929);

White v. *Schloerb*, 178 U. S. 542, 547 (1900);

Morehouse v. *Giant Powder Co.*, 206 Fed. 24, 28 (C. C. A. 9th, 1913);

Mitchell Storebuilding Co. v. *Carroll*, 193 Fed. 616, 619 (C. C. A. 6th, 1912), app. dis. and cert. denied 232 U. S. 379;

In re Consumers Albany Brewing Co., 224 Fed. 235 (D. C., N. D., N. Y., 1915);

In re A. Musica & Son, 205 Fed. 413, 416 (D. C., E. D., La., 1913); affd. 211 Fed. 326 (C. C. A. 5th, 1914); app. dis. 234 U. S. 263 (1914);

In re Nuttall, 201 Fed. 557, 558 (D. C., S. D., N. Y., 1912);

In re Donnelly, 188 Fed. 1001 (D. C., N. D., Ohio, 1910);

In re Swofford Bros. Dry Goods Co., 180 Fed. 549, 553 (D. C., W. D., Mo., 1910);

In re Van Buren, 164 Fed. 883 (D. C., S. D., N. Y., 1908);

In re Hicks, 133 Fed. 739, 745 (D. C., N. D., N. Y., 1905);

In re Hornstein, 122 Fed. 266, 270-271 (D. C., N. D., N. Y., 1903);

In re Kletchka, 92 Fed. 901 (D. C., S. D., N. Y., 1899).

Pursuant to the same general jurisdiction and power of the bankruptcy court, in *John Matthews, Inc.* v. *Knickerbocker Trust Co.*, 192 Fed. 557 (C. C. A. 2d, 1911), *supra*, the Circuit Court of Appeals affirmed the issuance of an injunction in an ordinary bankruptcy proceeding against the sale of collateral held by a pledgee where the collateral consisted of unsecured obligations of the bankrupt. Delivering the opinion of the Circuit Court of Appeals in that case, Judge Noyes said:

> "Any rule which would permit the proof of two notes for one indebtedness would permit the proof of a dozen and would substitute for *pro-rata* distribution among real creditors distribution in accord-

> ance with the ability of a bankrupt to make manifold obligations for single debts."

The Court there received its power to issue the injunction from the necessity of preventing the sale which would have defeated **equitable distribution** and thus have prevented the accomplishment of the purpose of ordinary bankruptcy proceedings.

And, in *In re Purkett, Douglas & Co.*, 50 F. (2d) 435 (D. C., S. D., Cal., 1931), *supra*, the bankruptcy court in an ordinary bankruptcy proceeding exercised such general power and issued an injunction against the sale of collateral where it was necessary for the carrying out of the purposes of the proceeding. The injunction was limited to the necessities of that proceeding. In that case the Court enjoined the sale of collateral until, and only until, certain conflicting claims regarding the pledged collateral could be adjudicated.

The authority of these cases has never been questioned.

Moreover a close analogy showing that the grant of power to enjoin when necessary is contained in Clause (15) of Section 2 appears in the line of cases in which this Court has held that a Federal Court, when **necessary** to prevent impairment or frustration of its jurisdiction, may issue an injunction under the general provision of the Judicial Code which reads:

> "The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be **necessary** for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law" [28 U. S. C. A., §377].

It is uniformly held that under this general section, where **necessary**, injunctions not authorized by any other statute may be issued against proceedings in state courts despite

the statue [28 U. S. C. A., §379*] specifically prohibiting injunctions against state court proceedings.

Kline v. *Burke Construction Co.*, 260 U. S. 226 (1922);
Essanay Film Manufacturing Company v. *Kane*, 258 U. S. 358 (1922);
Wells Fargo & Co. v. *Taylor*, 254 U. S. 175 (1920);
Looney v. *Eastern Texas R. R. Co.*, 247 U. S. 214 (1918);
Madisonville Traction Company v. *Saint Bernard Mining Company*, 196 U. S. 239 (1905);
Julian v. *Central Trust Co.*, 193 U. S. 93 (1904);
French, Trustee, v. *Hay*, 89 U. S. 250 (1874);
National Fire Insurance Co. v. *Sanders*, 38 F. (2d) 212 (C. C. A. 5th, 1930).

In *Kline* v. *Burke Construction Co.*, 260 U. S. 226 (1922), *supra*, this Court said (p. 228):

> "Section 265 of the Judicial Code provides: 'The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.' But this section is to be construed in connection with §262, which authorizes the United States courts 'to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law.' See *Julian* v. *Central Trust Co.*, 193 U. S. 93, 112; *Lanning* v. *Osborne*, 79 Fed. 657, 662. It is settled that where a federal court has first acquired jurisdiction of the subject-matter of a cause, it may enjoin the parties

* "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

from proceeding in a state court of concurrent jurisdiction **where the effect of the action would be to defeat or impair the jurisdiction of the federal court.**"

In *Looney* v. *Eastern Texas R. R. Co.*, 247 U. S. 214 (1918), the court said (p. 221):

> "The use of the writ of injunction, by federal courts first acquiring jurisdiction over the parties or the subject-matter of a suit, for the purpose of protecting and preserving that jurisdiction until the object of the suit is accomplished and complete justice done between the parties, is familiar and long established practice, *Freeman* v. *Howe*, 24 How. 450; *Harkrader* v. *Wadley*, 172 U. S. 148, 163, 164; in a rate case, *Missouri* v. *Chicago, Burlington & Quincy R. R. Co.*, 241 U. S. 533, 543."

Similarly, a bankruptcy court derives from Clause (15) of Section 2 full power to issue injunctive orders when necessary to carry out the purposes of the Bankruptcy Act in the particular proceeding.

It must be borne in mind that there are now several different kinds of bankruptcy proceedings, each with a different purpose, viz.: (1) an ordinary bankruptcy proceeding, the purpose of which is orderly **liquidation** and equitable **distribution** to creditors; (2) a proceeding under Section 74 [11 U. S. C. A. §202], the purpose of which is to obtain a **composition** and **extension for an individual**; (3) a proceeding under Section 75 [11 U. S. C. A. §203], the purpose of which is to obtain a **composition** and **extension for a farmer**; (4) a proceeding under Section 77 [11 U. S. C. A. §205], the purpose of which is to effect the **reorganization of a railroad**; and (5) a proceeding under Section 77B [11 U. S. C. A. §207], the purpose of which is to effect the **reorganization principally of industrial corporations.**

It is obvious that the necessity for any particular type of injunction order in bankruptcy depends upon which of

these types of proceedings is involved. An injunction of a particular type which is unnecessary in one type of proceeding might be necessary in another.

When Section 77 was inserted in the Bankruptcy Act a new purpose of a proceeding under the Act was introduced. It is clear from a reading of Section 77 that the sole purpose of a proceeding thereunder is to permit a railroad "to effect a plan of reorganization." (First sentence of subdivision (a) and clause (7) of subdivision (c) of Section 77) [11 U. S. C. A. §205 (a) (c) (7)].

That the purpose was to reorganize not only the parent railroad corporation but the entire **system**, including subsidiaries and leased lines, is shown by the provisions of Section 77 permitting all such system corporations to come into the proceeding, as debtors, and into the same District Court as the principal debtor irrespective of the location of such corporations or their lines. (Sixth sentence of subdivision (a) of Section 77) [11 U. S. C. A., §205 (a)].

Since the purpose of a proceeding for **reorganization** of a railroad under Section 77 is so different from the purpose of an ordinary bankruptcy proceeding involving **liquidation** and **distribution** of the bankrupt's estate, it follows that cases as to injunctions under the one type of bankruptcy cannot be cited blindly as authorities in connection with the other type of bankruptcy, for the power to enjoin arises always from the necessity of the injunction and the necessities are different in connection with these two different types of bankruptcy. Thus, in an ordinary bankruptcy proceeding, if collateral securing a claim against the bankrupt was of such a nature that realization thereon would not interfere with orderly liquidation and equitable distribution, there was no necessity and therefore no power, to enjoin the sale pursuant to Clause (15) of Section 2.

Where the collateral consists of chattels or bonds which are the obligations of a third party, realization thereon does not increase the indebtedness of the bankrupt but constitutes simply a liquidation of a portion of its assets and a

distribution thereof to the creditor entitled thereto, leaving him with an unsecured claim against the bankrupt estate for the deficiency, if any. Accordingly, in ordinary bankruptcy proceedings courts did not usually need to, and therefore did not, enjoin the sale of collateral of this type.

In re Hudson River Navigation Corporation, 57 F. (2d) 175 (C. C. A. 2nd, 1932);
In re Mayer, 157 Fed. 836 (C. C. A. 2nd, 1907).

And these respondents do not now see any necessity even in proceedings under Section 77 or Section 74 for enjoining, generally, the sale of pledged collateral of that type—that is to say, collateral which is not secured by System property.*

In an ordinary bankruptcy there would be no necessity for enjoining the sale of collateral consisting of secured bonds of the bankrupt itself, if the sale of the secured bonds would not interfere with the orderly liquidation and equitable distribution of the estate, that is, if virtually the face amount of the pledged secured bonds would be realized. Only one decision has been cited by petitioners holding that the sale of that type of collateral would not be en-

* Injunctions against the sale of collateral consisting of obligations of **third parties** have been refused in proceedings under Section 74. We would expect this since such sales would not interfere with the purposes of proceedings under Section 74 or for that matter under Section 77 or ordinary bankruptcy proceedings. Accordingly *In the Matter of Charles P. Doelger, Debtor*, 9 American Bankruptcy Review, 329 (June, 1933), D. C. S. D. N. Y., and *In the Matter of H. F. Chaiken, Debtor*, 10 American Bankruptcy Review, 14 (August, 1933), D. C. M. D. Pa., cited by petitioners, where injunctions against the sale of this type of collateral were refused in proceedings under Section 74, are not in point. They were applications by individual Debtors in proceedings under Section 74 of the Bankruptcy Act to enjoin holders of their notes from selling securities which they held as collateral for such notes. **The collateral did not consist of obligations of the Debtor either secured or unsecured**, but simply ordinary more or less readily marketable securities issued by others. There is no indication that the sale of such collateral interfered in any substantial degree with carrying out the purposes of the proceedings under Section 74. These respondents do not claim that in such circumstances in a proceeding under Section 74 or under Section 77 or in ordinary bankruptcy the Court should issue an injunction. It is therefore quite obvious that these two decisions are no authority whatever as to the propriety of the issuance of an injunction in this proceeding under Section 77 against the sale of collateral of the type and amount held by the Banks and the R. F. C., with the effect such sale would have on this proceeding.

joined in an ordinary bankruptcy proceeding. *In re Ironclad Mfg. Co.*, 192 Fed. 318 (C. C. A. 2nd, 1912). In that case no facts appeared showing that the sale of the collateral would interfere with the orderly distribution and liquidation of the estate. The case is therefore not authority for the proposition that the sale of collateral consisting of secured bonds of the bankrupt will not be enjoined in ordinary bankruptcy even if the sale would interfere with liquidation and distribution.

It should also be pointed out that the decision in that case is simply a memorandum of two lines and rests on a mistaken view of the holding in *Jerome* v. *McCarter*, 94 U. S. 734, which is also misconstrued by the petitioners herein. *Jerome* v. *McCarter* was an equity receivership, and there was no question of enjoining the sale of any collateral. The Court simply held that bonds of the company in receivership, which had previously been collateral for obligations of that company and had been sold prior to the equity receivership, could be proved in the equity receivership. It happened that the sale had taken place during a prior bankruptcy, in which no application to enjoin the sale had been made.

The other cases cited by the petitioners as showing that Bankruptcy Courts, prior to the enactment of Section 77, did not enjoin the sale of this type of collateral do not stand for that proposition.

In *Turner* v. *Metropolitan Trust Co.*, 207 Fed. 495, 499 (C. C. A. 9th, 1913), the sale of the collateral took place **before** the bankruptcy.

Guaranty Trust Company of New York v. *Galveston City R. Co.*, 87 Fed. 813 (C. C. A. 5th, 1898), and *Rogers Brown & Co.* v. *Tindel Morris Co.*, 271 Fed. 475 (D. C. E. D. Pa., 1921), were cases of **equity** receiverships.*

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* All of the other cases cited by petitioners which relate to the question of injunctions against the sale of collateral are cited by them only as showing (1) the rule in equity receiverships:

Guaranty Trust Co. v. *Fentress*, 61 F. (2d) 329 (C. C. A. 7th, 1932) (*dictum*);

On the other hand, the decisions are uniform that where an injunction against the sale of collateral or any other injunction is shown to be necessary to carry out the purposes of an ordinary bankruptcy proceeding, the Courts have power to issue them. We have already referred to *John Matthews, Inc.* v. *Knickerbocker Trust Co.*, 192 Fed. 557 (C. C. A. 2nd, 1911), where an injunction was issued in an ordinary bankruptcy proceeding against the sale of collateral consisting of unsecured obligations of the bankrupt on the ground that the injunction was necessary because the sale would interfere with equitable distribution among the creditors. Petitioners do not question the authority of this case.

While no case seems to have arisen in ordinary bankruptcy, one can readily be imagined where the sale of collateral consisting of secured obligations of the bankrupt would interfere with the purposes of an ordinary bankruptcy proceeding. We have no doubt that in such a case the Court would enjoin the sale. Suppose a bankrupt cor-

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International Banking Corporation v. *Lynch*, 269 Fed. 242 (C. C. A. 9th, 1920);
Matter of Binghamton General Electric Company, 143 N. Y. 261, 38 N. E. 297 (1894) (involving statutory dissolution proceedings);
Northern Pacific Railway v. *Frank Waterhouse & Co.*, 279 Fed. 750 (D. C. W. D. Wash., 1922);

or (2) the rule in ordinary bankruptcy regarding injunctions against the sale of collateral consisting of obligations of third parties or chattels:

In re Browne, 104 Fed. 762 (D. C. E. D. Pa., 1900);
In re Hudson River Navigation Corporation, 57 F. (2d) 175 (C. C. A. 2nd, 1932);
In re Mayer, 157 Fed. 836 (C. C. A. 2nd, 1907);
In re Jersey Island Packing Co., 138 Fed. 625 (C. C. A. 9th, 1905) (*dictum*).

The following cases cited by petitioners on this point do not even involve the question of injunctions against the sale of collateral:

Bush v. *Adams*, 165 Fed. 802 (C. C. S. D. N. Y., 1908);
Dibert v. *Wernicke*, 214 Fed. 673 (C. C. A. 6th, 1914);
Harvey v. *Smith*, 61 N. E. 217 (Mass., 1901);
In re Mertens, 144 Fed. 818 (C. C. A. 2nd, 1906), aff'd. *sub nom.* Hiscock v. Varick Bank of New York, 206 U. S. 28 (1907);
In re Ward, 104 Fed. 985 (D. C. D. Mass., 1900);
Mercer Nat. Bank of Harrodsburg v. *Whites Ex'r*, 32 S. W. (2d) 734 (Ky., 1930);
Risk v. *Kansas Trust & Banking Co.*, 58 Fed. 45 (C. C. D. Kan., 1893)

poration had given a creditor for $10,000 security consisting of its $20,000 bond secured by mortgage on a vacant lot worth $1,000. The sale of this collateral would interfere with equitable distribution of the estate in an ordinary bankruptcy proceeding almost to the same degree as would the sale of collateral consisting of unsecured obligations of the bankrupt. An injunction against the sale thereof would be necessary for the enforcement of the purposes of an ordinary bankruptcy proceeding and should be issued. Petitioners have presented no authority showing that an injunction would not have been issued in such a case even in ordinary bankruptcy. The Banks (in their brief, pp. 20, 55, 75) seem to cite with approval on other points *Hatch, "A Form of Depression Finance—Corporations Pledging their own Bonds,"* 47 H. L. Rev. 1093, an exhaustive article on the subject which holds the view that an injunction should be issued against the sale of pledged bonds of the bankrupt in ordinary bankruptcy.

However that may be, cases which deal with the necessity of enjoining the sale of this particular class of collateral in a proceeding designed primarily for orderly **liquidation** and equitable **distribution**, have no real bearing on the question of the necessity of enjoining the sale of this class of collateral in a proceeding the sole purpose of which is **reorganization**.

It seems obvious that **the introduction in the Bankruptcy Act of a provision for a new proceeding with a new purpose, i.e., reorganization, will call for new applications of the power of bankruptcy courts** under Clause (15) of Section 2 to issue injunctive and other orders necessary for the enforcement of the Act and the carrying out of the purposes of the new proceeding.

That the new sections of the Bankruptcy Act providing for new proceedings with new purposes have called for new applications of the power of the bankruptcy courts to issue injunctive orders under Clause (15) of Section 2 when necessary to carry out the new purpose

appears from *In re Collier*, 4 Fed. Supp. 700 (D. C. S. D. N. Y. 1933). That case was a proceeding under Section 74 having the purpose of obtaining for an individual debtor a composition and extension of his debts whether provable or not in ordinary bankruptcy. The court enjoined the continuation of a suit in a State court on an unsecured claim assumed by the court not to be provable in ordinary bankruptcy. The court did so notwithstanding that Section 74 did not contain any express provision for enjoining an unsecured creditor, and Section 11 of the old Bankruptcy Act [11 U. S. C. A., §29] (incorporated into Section 74 by subdivision (n)) [11 U. S. C. A., §202 (n)] provided for, and only for, enjoining suits on debts provable and dischargeable in ordinary bankruptcy. The court quoted Clause (15) of Section 2 of the Act permitting it to enter such orders as may be necessary for the enforcement of the Act, and held that under this provision it had the authority to grant the injunction applied for, despite the fact that no such injunction could have been entered in an ordinary bankruptcy proceeding and that there was no express provision authorizing such injunction in Section 74.

We submit that the issuance of the injunction against the sale of petitioner's collateral in this Section 77 proceeding is but an example of another such new application of the undoubted power of the Bankruptcy Court to issue an injunction order if **necessary** to preserve the purpose of the proceeding.*

The remaining points in this brief are in reply to points made by the petitioners.

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*The R. F. C. seems to imply (R. F. C. Brief, p. 31) that, even though it be held that the petitioners herein cannot be enjoined, the Trustees for the Rock Island bond issues may be enjoined from selling the $145,749,050 of System collateral held by them. The R. F. C. differentiates the two situations solely on the length of term of the original loans. But, certainly, if the Court has jurisdiction and power to enjoin the sale of the collateral pledged under the bond issues, it must have jurisdiction and power to enjoin the sale of the collateral pledged to the petitioners.

POINT III.

There is nothing in Section 77 or other sections of the Bankruptcy Act or the R. F. C. Act which negatives the power of the Court to enjoin the sale of collateral when necessary for the enforcement of Section 77.

(a) Subdivision (n) of Section 77 contains no limitation on the power to issue injunction orders under Clause (15) of Section 2 when necessary for the enforcement of Section 77.

The petitioners claim that subdivision (n) of Section 77 incorporates into Section 77 all of the rules and decisions in ordinary bankruptcy existing before the enactment of Section 77, and that such decisions include decisions (of which we have shown there is really only one, pp. 32-33 herein), prior to enactment of Section 77, in which an injunction against the sale of collateral consisting of secured obligations of the bankrupt was refused by a bankruptcy court. They say that therefore such decisions (only one) are controlling in proceedings under Section 77, notwithstanding the difference in purpose of the proceeding from the purpose of ordinary bankruptcy.

There are a number of conclusive answers to this argument. Subdivision (n) [11 U. S. C. A., §205 (n)] reads as follows:

> "In proceedings under this section **and consistent with the provisions thereof, the jurisdiction and powers of the court,** the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and his property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."

(1) Subdivision (n) is a **grant** of power to the Court over the Debtor and its property and thus cannot be con-

strued as a **limitation** upon the power of the Court requiring the Court to adhere blindly to now inapplicable precedents.

(2) Subdivision (n) begins with a proviso that the powers and jurisdiction granted therein must be "consistent" with the provisions of Section 77. Accordingly, if as we contend, it is inconsistent with the purposes of the provisions of Section 77 (all of which look toward reorganization) to permit pledgees to sell collateral where the effect of the sale would prevent the preparation and consummation of a plan of reorganization, no provision contained in subdivision (n) and no decision in ordinary bankruptcy inconsistent with the purposes of Section 77 could operate to prevent the Court from issuing this injunction. Therefore, since subdivision (n) contains this proviso, any argument based on the subdivision or such decision begs the real question at issue upon this application.

(3) We do not claim that the general **powers** of the Court to issue injunctions necessary for the enforcement of the Act are enlarged by Section 77, but merely that the existence of Section 77 calls for a **new application** of these general powers. Therefore it is immaterial that subdivision (n) of Section 77 does not contain express enlargement of these general powers.

(4) Furthermore, we have already shown (pp. 35-36) that the Courts have applied the broad injunctive powers contained in Clause (15) of Section 2 in a new way in aid of the enforcement of the new purpose of Section **74** notwithstanding that Section 74 contains a provision, subdivision (m) [11 U. S. C. A. §202 (m)], similar to this subdivision (n) of Section 77 [11 U. S. C. A. §205 (n)].

In re Collier, 4 Fed. Supp. 700 (D. C. S. D. N. Y., 1933).

Clearly a provision such as subdivision (n) in Section 77 can only enlarge the powers of the Court and cannot be

deemed a limitation on the powers of the Court. Particularly it cannot be deemed a limitation that would prevent the Court from enforcing and carrying out the purpose of the provisions of the very section in which it is incorporated.

(b) Subdivision (l) of Section 77 giving the Court power to stay litigations, including litigations to enforce liens, is not a limitation on the power of the Court derived from other provisions of the Act to enjoin the sale of pledged collateral where necessary to carry out the proceedings.

Petitioners call attention to subdivision (l) of Section 77 [11 U. S. C. A. §205 (l)] which was obviously written with the purpose in mind of controlling litigation against the debtor, and which, therefore, incidentally provides for staying litigation to enforce liens. Petitioners cite the maxim *expressio unius est exclusio alterius*, and say that because Congress gave express power to stay judicial proceedings, including judicial proceedings for the enforcement of liens, Congress intended to negative the power to enjoin enforcement of liens by means other than judicial proceedings.

There is a short answer to this argument of the petitioners. Subdivision (l) simply deals with the subject of controlling litigation, including litigation to enforce liens upon the estate, and is a grant of power to the Court to control litigation. A subdivision which constitutes a grant of power in connection with the subject of controlling litigation cannot be stretched by any logical process into a limitation of power in connection with a subject which does not involve litigation. Subdivision (l) simply has nothing to do with injunctional or other orders which do not relate to litigation. It certainly cannot be construed, as contended by the R. F. C., as containing the only injunctional powers of the Bankruptcy Court.

The maxim *expressio unius est exclusio alterius* might be used in the construction of subdivision (l) in a case

where an injunction was applied for against the **commencement** of a judicial proceeding not designed to enforce a lien. In such case, it could be urged in opposition to the issuance of an injunction that since subdivision (l) provides for an injunction against a **pending** judicial proceeding not designed to enforce a lien, but makes no reference to enjoining **commencement** of such a judicial proceeding, it was intended that an injunction should not issue against **commencement** of a judicial proceeding not designed to enforce a lien. But the maxim certainly cannot be stretched to imply a limitation upon the injunctional power of the court **on subjects other than judicial proceedings.**

To argue that, because the right to enjoin is specifically given by subdivision (l) in one class of case, it cannot exist in other and quite different classes of cases, is to argue that the general powers clause, Section 2, Clause (15), is no longer in effect. But that clause was inserted in the statute for the precise purpose of preventing deficiencies of power and miscarriages of the proceedings resulting from the failure of specific sections expressly to state all the powers required by the Court for the purpose of making proceedings under the Act effective.

Since we do not claim that the power to issue this injunction order is contained in subdivision (l), we shall not discuss the argument of petitioners that subdivision (l) does not give the power. But in conclusion on this point the attention of the Court should be called to the fact that the petitioners themselves urge that their "pledges" are not "liens" and contend therefore, that in case subdivision (l) were to be construed as applicable to enjoining enforcement of liens without judicial proceedings (for which construction no one contends), their pledges would not be affected by subdivision (l), which uses the word "liens" alone (R. F. C. brief, pp. 51-55; Banks' brief, p. 38). This argument of theirs certainly weakens petitioners' contention that subdivision (l) has any bearing on the subject of their "pledges."

Also, the argument of petitioners that subdivision (l) should be construed to negative the power of the Court to issue injunctions in proceedings under Section 77 against the sale of collateral seems to us to be virtually destroyed by the statements in the R. F. C. brief (p. 31) implying that even though petitioners cannot be enjoined, the Trustees for the Rock Island bond issues may be enjoined from selling the System collateral held by them. If there is power to enjoin the bond issue Trustees, notwithstanding subdivision (l), there must be power to enjoin the petitioners, notwithstanding subdivision (l).

(c) Section 67 (d), providing that liens shall not be affected by the Act, does not prohibit the issuance of injunctions against the use by pledgees of particular remedies for enforcing their pledges.

The petitioners claim that old Section 67 (d), although not referred to in new Section 77, guarantees to them the right at any time to sell their collateral and therefore limits the application of Clause (15) of Section 2.

There is no merit to this contention. Section 67 (d) simply provides that "liens" shall not be affected by anything in the Bankruptcy Act. Section 67 (d) [11 U. S. C. A. §107 (d)] reads:

> "*d.* Liens given or accepted in good faith and not in contemplation of or in fraud upon the provisions of this title, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall, to the extent of such present consideration only, not be affected by anything herein."

The section merely affirms the substantive right of lienors to retain their security unimpaired, but does not apply to, much less guarantee, their remedies. Petitioners' argument from Section 67 (d) is entirely fallacious when it is borne in mind that notwithstanding the existence of

such Section—which covers mortgage liens to precisely the same extent as any others—the Courts have held up the enforcement of mortgage liens even in ordinary bankruptcy proceedings.

Straton v. *New*, 283 U. S. 318, 321 (1931);
Isaacs v. *Hobbs Tie & Timber Company*, 282 U. S. 734 (1931).

There is obviously no such difference between a pledge and a mortgage as would warrant the protection of pledgees' remedies, as contrasted with the remedies of a mortgagee, under the general provisions of Section 67 (d).

It should also be borne in mind that petitioners' contention that subdivision (l) of Section 77 relating to "liens" has no application to "pledges", is inconsistent with their argument here that Section 67 (d) relating to "liens" applies to their "pledges" (R. F. C. brief, pp. 51-55; Banks' brief, p. 38).

(d) Section 57 (h), providing in the alternative for the valuation of security (i) by sale or (ii) by agreement or litigation, does not negative the power of the Court to enjoin the sale of pledged collateral in a proper case.

The petitioners contend that Section 57 (h) [11 U. S. C. A. §93 (h)] indicates that security held by secured creditors must always remain free for sale. The Banks, in their brief (p. 22), quote only one-half of the sentence which constitutes Section 57 (h), and argue from this emasculated provision that the Bankruptcy Act contemplates that secured creditors are always to have the right to sell their collateral. Section 57 (h) reads as follows (NOTE: Brackets enclose that portion of the sentence which is omitted by the Banks and which is the basis here, and has been the basis in the Courts below, for respondents' answer to the petitioners' contention):

"The value of securities held by secured creditors shall be determined by converting the same into

money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or [by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance]."

Thus Section 57(h) simply provides in general terms that security held by secured creditors may be valued in either of two ways, that is, by sale **or by agreement or litigation.** The section merely takes care of two alternative situations, either of which may occur—one is where security actually is sold, the other is where security is not sold. The section in no way indicates that a sale of security by a secured creditor must occur or will not be interfered with in a proper case. That this is so, is borne out by decisions, just cited (p. 42), enjoining the sale of mortgaged security through foreclosure and the decision in *John Matthews, Inc.* v. *Knickerbocker Trust Co.*, 192 Fed. 557 (C. C. A. 2d, 1911), enjoining the sale of collateral security when in the form of unsecured obligations of the bankrupt.

Furthermore, the section by its terms shows that it is intended only to provide for the fixing of the amount upon which a secured creditor in an ordinary bankruptcy is to receive a dividend. The whole purpose of this provision of the old Bankruptcy Act obviously lies in its concluding words "and a dividend shall be paid **only** on the unpaid balance." It therefore has no possible application to a proceeding under Section 77 which is to result in a reorganization and not in a distribution of dividends.

In addition to making the general argument that Section 57 (h), as part of the old Bankruptcy Act, is applicable to a proceeding under Section 77, the Banks seem to argue (Banks' brief, pp. 23-24, footnote, p. 41) that it has been incorporated in its entirety into Section 77 by a reference thereto in Section 77 (g) (6) [11 U. S. C. A., §205 (g) (6)].

It is difficult to see what assistance petitioners can draw from Section 77 (g) (6).* The language of Section 77 (g) (6) does not assist the petitioners. On the contrary, the language, if it has any bearing here, supports respondents' contentions. In the first place, the clause refers only to realization by creditors upon their liens, claims and securities by any method **under a plan**, and not prior to the adoption of a plan. But more important, the clause expressly provides for three possible alternative methods for the protection of secured creditors. Under this clause the plan is to provide either [Section 77 (g) (6) (a)] for the sale of their securities subject to their liens, or [Section 77 (g) (6) (b)] for the sale **free of such liens but at not less than a fair upset price to be fixed under the supervision of the Court and the Interstate Commerce Commission**, or [Section 77 (g) (6) (c)] for **appraisal** of the liens or the new securities allotted in exchange therefor under the plan. The only type of sale discussed by petitioners here is a sale free of lien, and Section 77 (g) (6) (b) states that such a sale must be under the supervision of the Court and the Commission, thus indicating that the collateral is, and will remain, subject to the jurisdiction of the Court until a plan is prepared, adopted and carried out. It is significant that the clause expressly empowers the Court and the Commission to place a limitation on the sale by fixing a minimum price at which the securities may be sold.

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*"*g*. Upon such approval by the commission, and after hearing such objections as may be made to the approved plan, the judge shall confirm the plan if satisfied that * * * (6) the plan provides with respect to any class of creditors the acceptance of which is requisite to the confirmation of the plan, and who would not become bound by the plan under the provisions of subdivision (h) of this section, adequate protection for the realization by them of the value of their securities, liens, and claims, either (a) by the sale of such property subject to their liens, if any, or (b) by the sale free of such liens at not less than a fair upset price, and the transfer of such liens to the proceeds of such sale, or (c) by appraisal and payment in cash of either the value of such liens and claims or, at the objecting creditors' election, the value of the securities allotted to such liens and claims under the plan. Section 57, clause (h), of this Act shall be applicable to the appraisal of securities under this section, and the value of the unpaid balance shall be appraised as an unsecured claim; * * *. In the case of a sale or appraisal under clause (5) or (6) of this subdivision (g) the court shall refer to the commission for its consideration and determination the amount to be fixed as the upset price and the appraisal of any securities." [11 U. S. C. A. §205 (g) (6)].

(e) There is nothing in the legislative history of Section 77 to show that Congress intended that the Courts should not enjoin the sale of collateral when necessary for the enforcement of that Section.

A number of references have been made by petitioners to remarks in debates in Congress and before Congressional Committees, in an attempt to show that Congress did not intend to give to the Courts the power to enjoin the sale of collateral in any case.

Before any Congressional debates can be introduced to assist in the construction of a section of a Federal statute, there must be an ambiguity in the section. The only sections of statutes relied on here by the respondents are Clause (15) of Section 2 of the Bankruptcy Act, and the express purposes set forth in Section 77 of the Act. Therefore, it is only if these are ambiguous that introduction of Congressional debates would be warranted.

There is no ambiguity here. This is admitted by the Banks which say (Br., p. 46): "there is no ambiguity in Section 77 as to the point at issue," and by the R. F. C., which says (Br., p. 57): "there is no ambiguity in Section 77 on the questions here presented,".

But we need not rely on these admissions. The clear language of Clause (15), of Section 2 empowers the Court to issue orders which are **necessary** for the enforcement of the Act and the protection of the purposes of the particular bankruptcy proceeding. The clearly expressed and undisputed purpose of Section 77 is reorganization. What orders are **necessary** for the enforcement of the Act and to protect the proceeding does not involve an ambiguity, but is an issue for judicial determination upon the circumstances of the particular case. Recourse cannot be had to remarks of Congressmen as a criterion from which to review a judicial determination of necessity.

In this connection we cannot go along with the argument of the R. F. C. that, because it does not think the group which sponsored Section 77 had in mind enjoining

the sale of collateral as one of the purposes to be accomplished by the enactment of the Section, a court therefore should not enjoin the sale of collateral even when found necessary by the Court to carry out the admitted purpose of Section 77—reorganization. The sponsors of Section 77, having secured the passage of the legislation as a part of the Bankruptcy Act, are not entitled to direct its inevitable judicial results.

In any event, the only three instances of alleged expressions of Congressional intent relied on by the petitioners do not bear them out.

Petitioners refer (R. F. C. Br., p. 58; Banks' Br., p. 47) to a report of the Senate Committee on Judiciary regarding Section 74. They admit that no report was filed regarding Section 77, but they quote the portion of the report on Section 74 relating to subdivision (h) of Section 74 which describes the class of creditors' secured debts which may be extended in a Section 74 proceeding. This class is limited to "secured debts, the security for which is in the actual or constructive possession of the debtor or of the custodian or receiver." The report states that the secured debts extended by Section 74 were so limited, so that ordinary collateral loans would not be so extended under Section 74. Not only does the report not refer to Section 77, but when we turn to Section 77 we find that the secured debts affected by that section are described without the words of limitation contained in Section 74. For instance, subdivision (b) of Section 77 [11 U. S. C. A. §205 (b)] provides:

> "A plan of reorganization within the meaning of this section (1) shall include a proposal to modify or alter the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise."

and subdivision (h) of Section 77 [11 U. S. C. A. §205 (h)] provides:

> "Upon such confirmation, the provisions of the plan shall be binding upon * * * (7) all secured creditors of each class of which two-thirds in amount shall have accepted the plan."

Thus, there is no qualifying phrase in Section 77 as in Section 74, and there is a compelling inference that collateral loans are to be affected by proceedings under Section 77.

Petitioners quote an answer on the floor of the House to a question as to what effect Section 77 would have on the status of Government loans to the railroads, as contrasted with investments of the public in stocks and bonds of railroads. The answer was: "They are not given by this bill any preferred status which they do not now have, and to whatever degree now preferred the status is not lessened. They are not disturbed." (R. F. C. Br., p. 59; Banks Br., pp. 47-8.) It seems to us that the statement has no bearing on the question at issue in this case.

Finally, petitioners refer (R. F. C. Br., p. 59; Banks' Br., p. 48, footnote) to a collection of data relating to amending the Bankruptcy Act, printed for use of the Senate Committee on Judiciary, containing, among a mass of suggestions from private individuals, one proposed plan, among the provisions of which was included express provision for enjoining pledgees from converting collateral. There is no basis for the implication urged by petitioners that this provision, suggested by this one of many private individuals, was specifically rejected by the Congress or even given any serious attention.

(f) The powers given the R. F. C. by Section 5 of the R. F. C. Act are simply its own charter powers and have no bearing on the applicability to that corporation of general Federal legislation.

The argument of the R. F. C. that Section 5 of the Act [47 Stat. 5, 6, 7] which incorporated the R. F. C. and gave it its powers, providing that the R. F. C. is to have the

power to take over or provide for the administration and liquidation of collateral accepted by it as security, constitutes a part of every Federal statute of general application and gives it a special position in proceedings under Section 77 of the Bankruptcy Act, is so untenable as to make us hesitate to lengthen this brief by discussing it. It is sufficient to state that the R. F. C. Act is simply the charter, certificate of incorporation, or articles of association of the R. F. C. and gives it no more special rights under the general statutes of the United States or in its courts as against third parties than does the charter, certificate of incorporation, or articles of association of any other Federal corporation.

The argument of the R. F. C. regarding the effect of Section 5 of the R. F. C. Act can be reduced to an absurdity. Take one of the loans made by the R. F. C. secured by mortgage on railroad property. Would the R. F. C. assert that Section 5 of the R. F. C. Act guaranteed its right to liquidate that loan in the only way possible, that is, by foreclosure, notwithstanding the provisions of Section 77, and while other mortgage holders are prevented from foreclosing?

Again, would the R. F. C. assert that because of Section 5 of the R. F. C. Act, it can realize on security held by it for a railroad loan in any manner it saw fit without being subject to any control of the Court? That is, would it assert that it could sell in an oppressive manner to itself for a nominal consideration and not have the sale reviewed by any Court?

The R. F. C. brief, at pages 21 and 69, says: "These acts [incorporating and granting powers to the R. F. C.] were not considered by the Circuit Court of Appeals in its opinion," and "The statutory power of the Reconstruction Finance Corporation to take over and liquidate collateral was not passed upon by the Circuit Court of Appeals." The R. F. C. seems to imply that the point was raised by

it below and that the Circuit Court of Appeals in error ignored it. The fact is that the point is raised here for the first time.

POINT IV.

The sale of this collateral was properly enjoined in this summary proceeding.

The Banks and the R. F. C. say that the proceeding should have been plenary and not summary and also that, even if the proceeding was properly a summary proceeding, the moving and supporting papers were insufficient and they had inadequate notice and opportunity to be heard.

(a) The application for the injunction was not an "adverse" claim and a plenary proceeding was not required.

The petitioners contend that the District Court had no power in this summary proceeding to issue an injunction against the sale of collateral. They urge that by the application for an injunction the Debtor was attempting to enforce an **adverse** claim to the pledged property in a summary proceeding, whereas the proper procedure to enforce an adverse claim to property was by a plenary suit.

We do not question the proposition that **adverse** claims to property, where the person in possession has more than colorable right, must be made in a plenary suit. This application for an injunction, however, does not constitute the assertion of an **adverse** claim to the collateral. The Debtor does not assert that the pledges are invalid, or that the pledgees have not the right to possession of the pledged property as security for the Debtor's notes. No attack was made on the substantive rights of the pledgees or on the position to be accorded the pledgees in the plan of reorganization on account of their holding this large amount of collateral; and no relief was applied for which would do

more than delay the use by the pledgees of their remedies. [Petitioners have continued to receive distributions made on their collateral, which amounted, between September 26, 1933, and October 4, 1934, to $376,270 (R., p. 342).] In other words, no **adverse** claim to the collateral was advanced by this petition, which relates solely to the pledgees' remedies and not to their substantive rights.

Furthermore, the Debtor and these respondents are not seeking to assert any right which the Railway Company might have had prior to bankruptcy against the pledgees in respect of the collateral. We admit that whatever power this Court has to issue the injunction flows solely from the power of a Court of Bankruptcy to alter remedies of creditors so that they do not unduly interfere with the purpose of the bankruptcy proceeding and the enforcement of the Act. We admit that if no bankruptcy proceeding had been commenced, no right to this injunction would exist; and our contention rests solely on the power of the Bankruptcy Court to protect the proceeding pending in that Court. This being so, no plenary suit could be brought in any other court to obtain this injunction, but the power must be exercised by the Bankruptcy Court itself, if it is to be exercised at all.

This is not a mere matter of argument; there is direct authority that an injunction of this character may be issued in **summary** proceedings. In the cases where an injunction against the sale of collateral was issued by Bankruptcy Courts before the enactment of Section 77 the procedure was summary. The remedy of sale of pledged collateral was interfered with in summary proceedings in *John Matthews, Inc.* v. *Knickerbocker Trust Co.*, 192 Fed. 557 (C. C. A. 2nd, 1911), and in *In re Purkett, Douglas & Co.*, 50 F. (2d) 435 (D. C. S. D., Cal., 1931). In thirteen other cases which we cited earlier (pp. 26-27) as showing the varied situations in which the courts have applied clause (15) of Section 2, the courts invariably acted in summary proceed-

ings.* Also the right of foreclosure of a mortgage was interfered with in summary proceedings in *Allebach* v. *Thomas*, 16 F. (2d) 853 (C. C. A. 4th, 1927). The authority of these cases has never been questioned.

Likewise, in equity proceedings in jurisdictions where the rule is that the sale of collateral of this type may be enjoined, these injunctions are issued in **summary** proceedings. *Mississippi Valley Trust Co.* v. *Railway Steel Spring Co. et al.*, 258 Fed. 346, 354 (C. C. A. 8th, 1919). This is so notwithstanding that the rule in equity receiverships is the same as that in bankruptcy, that **adverse** claims must be made by **plenary** suit. *Dold Packing Co.* v. *Doermann et al.*, 293 Fed. 315, 331 (C. C. A. 8th, 1923).

The Circuit Court of Appeals dealt adequately with this point in its opinion (R., p. 324):

> "Nor can we say the appellants, the claimants, occupied such an adversary status that a trial in a plenary suit was necessary. The trustees named by the court in the bankruptcy proceedings were not claiming adversely to appellants. The creditors were not claiming liens or title to property adverse to the trustees. The trustees admit the legality of the security held by the creditors, as well as the validity and amount of the creditors' claims.
>
> "The controversy was restricted to a restraining of the immediate pursuit of a remedy by the creditors in order that a plan might be presented which would take care of appellants' claims in full but without special and irreparable injury to other creditors, general and preferred, who were less fortunate in the amount and character of their security.

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* *Weil* v. *Neary*, 278 U. S. 160 (1929), is not an exception because clause (15) of Section 2 was involved only collaterally in that case. What was directly involved was the validity of a contract made in violation of a court rule, and it was held that the rule in question was properly promulgated by the bankruptcy court under the power granted in clause (15) of Section 2.

> "Our conclusion is that the restraining order is an exercise of authority on the part of the court which was necessary to the effective use of the powers expressly conferred by Congress through this amendment. In short, it was the exercise of a power which was incident to those expressly conveyed by Congress to the court. The proceeding involved no adversary contest but merely the pursuit of a remedy. The court violated no right of the appellants of which they could complain when it temporarily stayed the enforcement of their remedy arising out of the pledge of the collateral. *Home Building & Loan Ass'n* v. *Blaisdell*, 290 U. S. 398."

(b) The R. F. C.'s "demurrer" to the notice of motion.

The R. F. C. tries to place the application for this injunction in the category of plenary suits, to liken the notice of the application to a bill of complaint, and then to "demur" to the notice as if it were a bill of complaint and have it dismissed for failure, standing alone, to contain all of the elements of some cause of action. In support of this proposition counsel for the R. F. C. cites cases where bills of complaint in plenary suits in equity have been dismissed as insufficient because not containing the necessary elements of the cause of action attempted to be alleged. In some of these cases the bills of complaint were accompanied by supporting affidavits which the Courts held should be ignored in determining the sufficiency of the bills themselves.

From these cases counsel for the R. F. C. argues that the Court upon this application should have looked only to the facts set forth in the Debtor's notice of motion and attached application, and not to those contained in the other papers submitted in support of the application, or to the facts of general record in the Rock Island proceeding well known to the Court. They then argue that all the facts upon which the Court based its decision were not contained

in the application and the application should therefore have been denied.*

But the R. F. C. has lost sight of the clear distinction between a summary application and a plenary suit. In a summary application such as this, the party affected need only originally be given notice of the relief sought. The facts may then be placed before the Court by any party by affidavit or by oral testimony. The application in a summary proceeding is merely a notice of motion and is not demurrable. These characteristics of a summary proceeding in bankruptcy were described in *In re Rockford Produce & Sales Co.*, 275 Fed. 811 (C. C. A. 7th, 1921), where Judge Evans said at page 813:

> "A summary proceeding ordinarily implies one begun without summons or subpoena and is usually tried upon affidavits and upon short notice, or determined even as an *ex parte* matter."

That a summary proceeding in bankruptcy is not subject to anything in the nature of a demurrer was stated in *In re Snelling*, 202 Fed. 258 (D. C., D. Mass., 1912), by Judge Morton, viz.:

> "It is plainly a summary proceeding. *In re* Epstein, 156 Fed. 42, 84 C. C. A. 208, 17 L. R. A. (N. S.) 465. I share the doubts expressed by Lowell, J., in *re* Mullen (D. C.), 101 Fed. 413, and *re* Berkman (U. S. District Court, Massachusetts, No. 3,266, April 11, 1901), 201 Fed. 180, as to the propriety of a demurrer in summary proceedings. Summary procedure implies, I think, a single hearing in each tribunal, at which the merits of the controversy

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* If the matters in the general record of the Rock Island proceeding are not pertinent to this application and appeal, as asserted by the R. F. C., why, then, did it and the Banks print this voluminous transcript containing almost the entire record? It is a new theory of litigation to us, which is urged by the R. F. C. that this voluminous record may be used to attack the District Court's order but not to support it (R. F. C. Brief, p. 29).

are investigated and decided, without much regard to the formal pleadings."

The R. F. C. also asserts that the Federal equity rules apply in bankruptcy proceedings, implying that the Equity Rules are to be used in summary bankruptcy proceedings as well as plenary proceedings and it cites General Order in Bankruptcy 37. A reading of General Order 37 itself shows that the Equity Rules apply in bankruptcy only in **equity proceedings** brought to enforce the provisions of the Bankruptcy Act and also that the rules may be departed from by the Judge to facilitate a "speedy hearing." Also, it is held that the Equity Rules have no application to a **summary** proceeding in bankruptcy. *In re Cunney, et al.*, 225 Fed. 426 (D. C. D. Mass., 1904).

Obviously, the essential facts could not be disputed, that is, the character and amount of the outstanding indebtedness of the System and of the collateral held therefor, which were all a matter of record. These facts (plus the sole purpose of a proceeding under Section 77—reorganization) were all the facts requisite for the determination by the Court that the injunction against the sale of the particular collateral held by petitioners was necessary to carry out the purpose of this proceeding. Whether the R. F. C. is right or wrong regarding the right to demur to the application, all these essential facts are contained in the application itself and the application would be sufficient standing alone.

(c) The petitioners had ample notice and full opportunity to be heard.

The petitioners question the essential adequacy of their notice and hearing under the summary proceedings.

The order entered June 8, 1933 approving the Debtor's original petition contained general language enjoining interference with the Debtor's property in effect constituting an injunction against the sale of collateral, and this

order was served on the six petitioners (R., p. 114). Subsequently, ten days' notice by registered mail was given each of the Banks and the R. F. C. of an application to be presented to the Court on September 26, 1933 for the specific injunction here appealed from (R., pp. 37-58). Each of the Banks and the R. F. C. appeared specially by counsel on September 26, 1933, and took part in the oral argument and discussion. At that hearing, counsel for the Banks and the R. F. C. stipulated not to sell the collateral without five days' notice to the Debtor (R., p. 76-77) after the Court stated that otherwise it would restrain them pending the decision (Banks' Brief, p. 9). Two briefs were submitted in support of the application on behalf of two of these Protective Committees, and the Banks and the R. F. C. by stipulation obtained the right to file answering briefs and to argue **on the merits** without prejudice to their special appearances (R. F. C. Brief, p. 8). A short time thereafter, the Banks and the R. F. C. filed four briefs and an appendix in opposition to the application, and two of the Protective Committees filed a reply thereto. Two of the Banks also filed a lengthy letter in opposition, a reply to which was filed by one of the Protective Committees. On October 24, 1933, a further hearing was held, and the R. F. C. and one of the Banks handed up two more memoranda in opposition to the injunction. The injunction order was signed November 22, 1933.

Obviously, on this record the petitioners cannot complain that they were not given ample opportunity to contest the application.

POINT V.

Neither Section 77 nor Clause (15) of Section 2 is unconstitutional when construed to permit the Courts to enjoin the sale of collateral when necessary for the enforcement of the Act.

The Banks alone contend that an injunction against the sale of collateral would be such an impairment of the obligation of contract as to constitute a deprivation of property without due process of law, contrary to the Fifth Amendment. The R. F. C. raises no constitutional question.

An injunction against the sale of collateral is but a restraint, incidental to the exercise of the bankruptcy power of Congress, against the use of a particular remedy for the enforcement of the pledge. This has been long established in the case of mortgage security. The enforcement of remedies under mortgages has been enjoined in bankruptcy and the restraint on the enforcement of such remedies has been held to be constitutional.

Straton v. *New*, 283 U. S. 318, 321 (1931);
Isaacs v. *Hobbs Tie & Timber Company*, 282 U. S. 734 (1931);
In re Franklin Brewing Co., 249 Fed. 333 (C. C. A. 2nd, 1918);
In re Hesie, 206 Fed. 789 (D. C., N. D. Texas, 1913).

In *In re Franklin Brewing Co.*, 249 Fed. 333 (C. C. A. 2nd, 1918), a mortgaged property securing an issue of bonds was ordered sold in bankruptcy free and clear of the lien of the mortgage. The mortgage provided that the outstanding bonds could be used in paying the purchase price of the mortgaged property on any sale, but the designed effect of the lower court's procedure was to prevent the use of the bonds in the manner provided in the mort-

gage. The sale produced less than the amount of the mortgage bonds. The trustee under the mortgage, on behalf of the bondholders, appealed from the order of sale. The Circuit Court of Appeals upheld the order, saying (p. 335):

> "Nor does a mortgage clause giving the right to bid on bonds in any way limit the power of the court, however much it may influence its discretionary application.
>
> "Congress, in the exercise of its constitutional right to establish systems of bankruptcy, may, and indeed always does, impair the obligation of contracts; a doctrine going much further than this point requires. Mitchell *v.* Clark, 110 U. S., at page 643, 4 Sup. Ct. 170, 312, 28 L. Ed. 279; Canada, etc., Ry. *v.* Gebhard, 109 U. S., at page 539, 3 Sup. Ct. 363, 27 L. Ed. 1020. Therefore we find in the order directing sale free of lien nothing unlawful, nor any abuse of discretion amounting to error of law, which is the only error available here upon a petition to revise. There was a drastic exercise of authority, but no intimation is intended that circumstances might not justify it as matter of discretion."

The Banks are infelicitous in the arguments which they advance to support their contention that the Bankruptcy Act, if construed to authorize the injunction order entered below, is unconstitutional. They assert (pp. 63-4) that the bankruptcy power of Congress is subject to the "due process" clause of the Fifth Amendment. Then they say (p. 64) that since there is a "due process" clause in the Fourteenth Amendment directed against action by the states, cases arising under the Fourteenth Amendment involving state legislation are, therefore, applicable to federal legislation subject to the Fifth Amendment. But when they then proceed to quote from five cases (Banks' Brief, pp. 65-7) to show that the taking away of a remedy under a contract is unconstitutional, they fail to point out that

four of the five cases arise neither under the Fifth Amendment nor the Fourteenth Amendment, but involve state legislation and have only to do with Article I, Section 10 of the Constitution, prohibiting a state from "**impairing the obligation of contracts,**" and that the fifth case is likewise not in point.* Obviously, these cases lend no support to their argument.

Certainly it cannot be that the Banks contend that the prohibition against impairment by a state of the obligation of contracts is co-extensive with the "due process" requirement of the Fifth Amendment and is thus a restraint on the bankruptcy power of Congress. Nothing is better settled than that Congress may regulate the making and performance of contracts in connection with any of the express purposes for which the Federal government was created. Thus, in *Highland* v. *Russell Car Co.,* 279 U. S. 253 (1929), this Court said (p. 261):

> "It is everywhere recognized that the freedom of the people to enter into and carry out contracts in respect of their property and private affairs is a matter of great public concern and that such liberty may not lightly be impaired. *Steele* v. *Drummond,* 275 U. S. 199, 205. Generally speaking, that right is protected by the due process clauses of the Fifth and Fourteenth Amendments. *Allgeyer* v. *Louisiana,* 165 U. S. 578, 591. *Adair* v. *United States,* 208 U. S. 161, 174. *Coppage* v. *Kansas,* 236 U. S. 1, 14. *Adkins* v. *Childrens Hospital,* 261 U. S. 525, 546. It is also well-established by the decisions of this court that such liberty is not absolute or universal and that Congress may regulate the making and performance of such contracts whenever reasonably necessary to effect any of the great purposes for which the na-

* The fifth case (*Lynch* v. *United States,* 292 U. S. 571, 587; Banks' Brief, p. 67) likewise refers to the "impairment" of contracts (citing two state legislation cases) and does not in any way tend to hold the "impairment" clause of the Constitution to be applicable to the federal legislation involved in that case.

tional government was created. *Frisbie* v. *United States,* 157 U. S. 160, 165. *Addyston Pipe & Steel Co.* v. *United States,* 175 U. S. 211, 228 *et seq. Ellis* v. *United States,* 206 U. S. 246. *Atlantic Coast Line* v. *Riverside Mills,* 219 U. S. 186, 202. *Louisville & Nashville R. R.* v. *Mottley,* 219 U. S. 467, 482. *Baltimore & Ohio* v. *Interstate Commerce Commission,* 221 U. S. 612, 618. *Second Employers' Liability Cases,* 223 U. S. 1, 52; *Gt. Northern Ry.* v. *Sutherland,* 273 U. S. 182, 193."

Clearly the bankruptcy power is one of the express powers vested in the Federal government by the Constitution. And the Banks themselves cite the decision of this Court in *Hanover National Bank* v. *Moyses,* 186 U. S. 181 (1902), in which the Court said of the bankruptcy power of Congress (p. 188): "The grant to Congress involves the power to impair the obligation of contracts and this the States were forbidden to do."*

The *Hanover National Bank* case establishes that if the due process clause imposes any limitation on the bankruptcy power of Congress,† the limitation is only that the acts of Congress must not be "grossly unreasonable" (186 U. S. at p. 192). It follows that when as in this case, the injunction order is based solely upon necessity and for the accomplishment of what is, admittedly, a legitimate exercise of the bankruptcy power, viz., reorganization, such an order cannot be "grossly unreasonable."

This constitutional argument of the Banks, if analyzed, really goes to the constitutionality of one of the foundations of Section 77 and similar new Sections of the Bank-

* And this Court has held that even the states in certain circumstances may impose reasonable limitations on the remedy under mortgage contracts. *Building & Loan Ass'n* v. *Blaisdell,* 290 U. S. 398 (1934).

† It has been vigorously argued that the "due process" requirement of the Fifth Amendment does not impose any restriction upon the bankruptcy power (Gerdes—"Constitutionality of Section 77B of the Bankruptcy Act," XII New York University Law Quarterly Review 196, 207-211 (December, 1934)).

ruptcy Act. The Sections would admittedly be of little value without the power to enjoin the foreclosure of mortgages. The Banks will admit and the R. F. C. will assert that Section 77 and similar new Sections prevent the foreclosure of mortgages. If it is unconstitutional to delay the remedies of pledgees, it is also unconstitutional to delay the remedies of mortgagees. On this point of constitutionality, there can be no possible distinction between them. Both remedies are usually contained in the contract. We submit that it is not unconstitutional to delay either the remedy of the mortgagee or the pledgee for the purpose of effecting a reorganization.*

The Circuit Court of Appeals dealt quite adequately with this untenable constitutional point of the Banks (R., p. 326):

> "As to the constitutionality of Section 77 of the Bankruptcy Act, little need be said in addition to what has already been stated, to show this objection is untenable. If the order assailed deals merely with the remedy, as we hold it does, then the amendments violate no provision of the Constitution. That such restraining orders affect the remedy only, see *Allebach* v. *Thomas*, 16 F. (2d) 853. Likewise, legislation which deals with the subject of bankruptcy, that is, legislation for the benefit and relief of cred-

* The Banks in their Brief (p. 74) point out that mortgaged real estate comes into the possession of the Bankruptcy Court, while pledged securities do not, and urge that because of this difference delay of the remedies of a trustee under a mortgage is a constitutional exercise of the bankruptcy power while delay of the remedies of a pledgee is not. But it is a strange doctrine which here seems to be contended for—that the constitutionality of the exercise by Congress of its bankruptcy power turns on whether the bankrupt had possession of the property at the time of the commencement of the bankruptcy proceedings. We need merely point out that the earlier English and American bankruptcy acts did not render preferences illegal, but protected the diligent creditor's right to the property of which he obtained possession even the day before bankruptcy (Remington on Bankruptcy, 4th Ed., 1934, Vol. I, pp. 13-21); and that the right first introduced into the Bankruptcy Act of 1898 to invalidate preferences secured within four months of bankruptcy has not been held unconstitutional although it changed the pre-existing law and deprived the creditor of property of which he had obtained possession before bankruptcy.

itors and debtors—is not subject to the same constitutional limitations as legislation which deals with other subjects and which affects contractual rights and obligations of debtors and creditors. The grant of power 'to establish * * * uniform laws on the subject of bankruptcy' was necessarily a grant of power the exercise of which would impair the obligation of contracts. For legislation on the subject of bankruptcy contemplated a discharge of the debtor's debts—which is an impairment of contractual obligations. *Hanover National Bank* v. *Moyses*, 186 U. S. 181."

POINT VI.

Section 77 has enlarged the territorial jurisdiction of the District Court in a proceeding under Section 77 so as to permit the issuance of process outside the district in a proper case.

The three Banks which were located outside the Northern District of Illinois, and which were served with notice of the hearing on the application outside the District, make the contention that in a proceeding under Section 77 [11 U. S. C. A., Section 205] the Court had no power to issue process against them. In substance, their argument is based solely on authorities before the enactment of Section 77 holding that generally the process of a United States District Court did not extend beyond the District in which it sat.

But this is a matter for Congress to determine, as was said in the leading case of *Toland* v. *Sprague*, 37 U. S. (12 Pet.) 300, 328 (1838). There this Court stated:

> "Congress might have authorized civil process from any circuit court, to have run into any state of the Union;".

This proposition has never been questioned. In fact, Congress has specifically provided that all writs of execution upon judgments obtained for the use of the United States may run to and be executed in any State or Territory.

> R. S., Section 986 [28 U. S. C. A., §839];
> *Pierce* v. *United States*, 255 U. S. 398 (1921).

Similarly, where any State is divided into two or more districts, writs of execution may be executed in any part of such State.

> R. S., Section 985 [28 U. S. C. A. §838].

Likewise, subpoenas may run beyond the territorial limits of the District Court, provided that the distance is not greater than one hundred miles from the place where court is held.

> R. S., Section 876, as amended by Act of Sept. 19, 1922, c. 344, 42 Stat. 848 [28 U. S. C. A. §654].

Accordingly, the problem presented involves simply a question as to whether or not Congress has expressly or impliedly given authority for orders issued in aid of proceedings under Section 77 to become effective outside the district. Upon this point subdivision (a) of Section 77 [11 U. S. C. A. §205 (a)] expressly provides;

> "If the petition is so approved, the court in which such order approving the petition is entered shall, during the pendency of the proceedings under this section **and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located.**"

Congress was obviously aware that railway lines of each one of the large railroad systems of the country ran into many Federal districts and circuits and States. For ex-

ample, the railway lines of the Rock Island parent company itself run into eleven states. Therefore when Congress gave exclusive jurisdiction over the proceedings involving such railway lines to one District Court, it must have intended to permit its process to run into other districts.

Furthermore, the sixth sentence of subdivision (a) of Section 77 provides that any subsidiary company or company owning a leased line, wherever it, or its property, may be situated, may come into the proceeding in the original District Court in which the principal debtor files its petition. This would be an absurd provision if that District Court were not then impliedly empowered to issue process in any part of the United States where the property of any of the debtors in the proceeding is located.

Section 77B of the Bankruptcy Act [11 U. S. C. A. §207] providing for the reorganization of industrial corporations, has been construed by the Circuit Court of Appeals for the Second Circuit to give the United States District Court in the Southern District of New York jurisdiction to issue its process directed outside of the District to require acts to be done outside the District.

> *In the Matter of Greyling Realty Corporation, Debtor,* Circuit Court of Appeals, Second Circuit, January 7, 1935, New York Law Journal, January 17, 1935, page 1.

In that case in an unanimous opinion the Court said:

> "It is argued that the district court has not the power to issue its process throughout the United States. Section 77A provides that 'in addition to the jurisdiction exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, courts of bankruptcy shall exercise original jurisdiction in proceedings for the relief of debtors, as provided in §77B of this act.' And §77B expressly grants to the court approving the petition, during

the pendency of the proceedings under this section, exclusive jurisdiction of the debtor and its property wherever located for the purpose of the section. The power to issue its process throughout the United States in furtherance of the purposes of a centralized reorganization is an inevitable conclusion because of vesting such power in the district court of primary jurisdiction. Sec. 77B, para. (c) (10)."

A similar extension of the territorial jurisdiction of the United States District Court has been implied from the necessity arising in enforcing other Federal statutes, even in the face of the express provisions of the Judicial Code restricting the District Court's territorial jurisdiction. In a number of cases decided by this Court and the lower Federal courts it has been established that where a statute vests a particular district court with exclusive jurisdiction of a suit or special proceeding, such a statute repeals *pro tanto* the general statutes relating to jurisdiction of the district courts, and authorizes the particular district court to issue its process throughout the United States.

First National Bank v. *Williams*, 252 U. S. 504 (1920);

Ex Parte Southwestern Surety Ins. Co., 247 U. S. 19 (1918);

United States v. *Congress Const. Co.*, 222 U. S. 199 (1911);

National Fire Ins. Co. v. *Sanders*, 38 F. (2d) 212 (C. C. A. 5th, 1930);

Southern Paving Const. Co. v. *City of Knoxville*, 245 Fed. 421 (C. C. A. 6th, 1917);

Baker Contract Co. v. *United States*, 204 Fed. 390 (C. C. A. 4th, 1913);

Fischer v. *Palmer*, 259 Fed. 355 (D. C., M. D., Pa., 1919);

United States v. *Illinois Surety Co.*, 238 Fed. 840 (D. C., E. D. N. C., 1917).

In *United States* v. *Congress Const. Co.*, 222 U. S. 199 (1911), *supra*, the suit was on a bond for performance of a building contract. The statute under which the bond was given provided that an action for performance of the bond could be instituted only in the district in which the building contract was to be performed. The United States brought the action in the district of which the defendants were inhabitants, which was not the district where the contract was to be performed. Some of the defendants moved to dismiss on the ground that that particular district court did not have jurisdiction. The United States, on the other hand, urged that the defendants could not be served with process except in the district in which the suit was brought and, therefore, suit could not be maintained in any other district. This court held that the suit was properly dismissed since it should have been brought in the district where the contract was to be performed, and further said that upon a suit being brought in the proper district, the process of that district court could be served on the defendants anywhere in the United States. After holding that the provision in the statute for bringing the suit in the district where the building contract was to be performed was binding on the United States, the Court said (p. 203):

> "The contention to the contrary is rested largely upon the supposition that, in instances like the present, where the defendants, or some of them, are inhabitants of another district, there is an insuperable barrier to the maintenance of the action in the district wherein the contract was to be performed. But this supposition is a mistaken one, for the provision restricting the place of suit operates *pro tanto* to displace the provision upon that subject in the General Jurisdictional Act, 25 Stat. 433, c. 866, §1, and amply authorizes the Circuit Court in the district wherein the action is required to be brought to obtain jurisdiction of the persons of the defendants

through the service upon them of its process in whatever district they may be found."

In *National Fire Ins. Co.* v. *Sanders*, 38 F. (2d) 212 (C. C. A. 5th, 1930), *supra*, an interpleader bill was filed by insurance companies in a district court under an act providing that an insurance company could file such a bill where there were two or more adverse claimants, citizens of different states. The act vested jurisdiction in the district court in the district within which one of the claimants resided. Before the bringing of this suit one of the claimants had brought suit in a state court, and the district court held that the state court had obtained jurisdiction to the exclusion of any other court. The Circuit Court of Appeals reversed and held that the action in the state court could be enjoined and that such injunction process could be served outside the district, saying (p. 215):

> "Furthermore, it is well settled that a federal court may issue an injunction to the parties litigant in a state court in order to preserve its jurisdiction properly attaching. Simon *v.* So. R. Co., 236 U. S. 115, 35 S. Ct. 255, 59 L. Ed. 492. And, when jurisdiction is specially vested, the process of the District Court may be served anywhere in the country. U. S. *v.* Congress Const. Co., 222 U. S. 199, 32 S. Ct. 44, 56 L. Ed. 163."

Section 77 specifically vests the United States District Court for the Northern District of Illinois with "exclusive jurisdiction" of this reorganization proceeding. It is plain from the above cases that this grant of jurisdiction to that Court carries with it the power of that Court to protect and carry out that jurisdiction by serving its process throughout the United States.

There is no basis, therefore, for the argument of these three Banks that under Section 77 the Court's territorial jurisdiction is no different from what it was under the old

Bankruptcy Act. As the R. F. C., and even these three Banks, point out in their briefs (R. F. C. Brief, p. 60; Banks' Brief, pp. 35, 87), one of the purposes of Section 77 was to do away with the expense, delay and inconvenience of ancillary proceedings.

Accordingly, the express provisions of Section 77 change the old territorial boundaries of the jurisdiction of the District Court for purposes of proceedings under Section 77.

In any event, the contention of the three non-resident Banks has no application to the issuance of this injunction against the other petitioners. If the injunction is sustained as to these other petitioners and ancillary process is held to be required in the case of the three non-resident Banks, ancillary process can be obtained, although we think avoidance of the necessity and expense thereof was one of the purposes of the enactment of Section 77.

The Circuit Court of Appeals, in ruling in this case against this contention of the three Banks, said (R., p. 322):

> "There were no legal obstacles to Congress' making the jurisdiction of the court of bankruptcy co-extensive with the territorial boundaries of the United States. In fact, under existing provisions of the Constitution, Congress might validly extend the jurisdiction of any District Court to the entire United States. *U. S.* v. *Union Pacific*, 98 U. S. 569, 604. There were strong reasons for extending the jurisdiction of the court of bankruptcy in railroad cases.
>
> "No sufficient reason has been advanced for refusing to give to the language of this section ('have exclusive jurisdiction of the debtor and its property wherever located') the effect and construction which it clearly demands. It extended the court's jurisdiction over the debtor's property so as to include the entire United States. It was intended to and did wisely exclude ancillary receivership proceedings

in bankruptcy cases wherein railroad corporations were the bankrupts.

"The question, Was the collateral with which the debtor secured its loans from the appellants, property as that word is used in Section 77? we answer in the affirmative. It is true a debt is not an asset. It is a liability. But here the bonds which the debtor gave the creditor as security (largely debtor's bonds) were not transferred absolutely to the creditor. An equity therein existed and belonged to the debtor. The debtor could sell this equity. It could assign it. The bonds were secured by a mortgage on debtor's property, and each bond carried its pro rata share of the mortgaged security. The same may be said of the bonds of the debtor's subsidiaries.

"This construction of the act overcomes the objection of those appellants who by special appearance attacked the order on the ground that the property of the bankrupt corporation was not within the territorial limits of the district wherein the court who entered the order was residing. We hold this was not necessary, for the arm of the court extended to the property of bankrupt 'wherever located'—that is, anywhere in the United States. In short, the jurisdiction of the court, so far as the property was concerned, included the territory wherein all of appellees' bonds were located."

POINT VII.

Discussion of general economic considerations urged by the R. F. C. and the Banks.

Before discussing the economic considerations urged by the petitioners we wish to point out that the paramount economic question to be considered as directly involved in this case is whether the sale of the $200,000,000 of System

collateral is to be enjoined so as to permit a reorganization of the Rock Island System, with its System properties* intact, or whether the extraordinary doctrine of corporate disintegration advocated by the R. F. C. is to be applied and the Rock Island System is to be dismembered without plan, but solely in accordance with the whim or exigencies of its pledgee creditors. In urging this doctrine in its brief, the R. F. C. states (Brief, p. 71):

> "A major economic corrective to this concentration [of subsidiaries' stocks and bonds] is the attrition which becomes possible, when a railroad after pledging its assets, defaults. If this form of securing short-term notes is eliminated the railroad will tend to go into receivership with this body of assets intact. Rarely has there been substantial dispersion of these assets [subsidiaries' stocks and bonds] as a result of reorganization. Rather, they are dealt with so that the railroad's property, including stock and bond interests in other corporations, emerges nearly intact. Almost the only avenue by which they can be dispersed is through direct sale, or sale to pay off collateral loans, and their passage into the hands of a creditor."

But certainly the whole effort of the Government for decades has been toward consolidation of railroad systems and the taking over and retention by great systems, of short lines, bridge lines, belt lines and terminals. In fact, the R. F. C. was created not to disintegrate, but to preserve the railroad systems as well as other institutions of the country.

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* The R. F. C. tries to imply that all of the subsidiary companies, bonds of which are held by it as collateral, may not be really appurtenant to, or parts of, the System and should be lopped off. Yet the R. F. C. itself has submitted to this Court in its Appendix (p. 27) the report of the I. C. C. giving the basis on which the R. F. C. made part of the advance and obtained most of the collateral, which shows that all such bond collateral is secured by properties which are an integral and essential part of the Rock Island System.

The R. F. C. and the Banks argue that it would be inconvenient for them to be restrained from the free right of sale of their collateral pending reorganization, and that such a restriction would make the R. F. C. and the Banks reluctant to give loans to railroad corporations *in extremis* on the security of collateral consisting of obligations of the railroad systems. We submit there is no sound public policy fostering the practice of managements of railroad corporations making desperate eleventh hour efforts to stave off insolvency proceedings and stay in control through a reckless pledge of system obligations far exceeding in principal amount the funds received and indebtedness secured. When the point is reached where a railroad corporation can obtain funds only through pledging secured obligations of its own system which in face amount ($54,000,000) are three times the amount of the loan ($17,000,000), the transaction would appear to be improvident and without due regard to the interests of existing creditors. There is no public policy dictating that railroad managements should have a free field for obtaining money on these terms. The recent "Report of the Federal Coordinator of Transportation to the Interstate Commerce Commission" of January 21, 1935, transmitted to the President and the Congress on January 21, 1935, states (Vol. I, pp. 56, 61):

> "As time went on, it began to be evident • • • that the policy of rolling up further indebtedness through government loans, and stripping the carriers of collateral in the process, was not sound or in the ultimate interest of their creditors.
>
> • • • • • •
>
> "No good will be accomplished by piling up indebtedness through Reconstruction Finance Corporation loans, unless the carrier has a substantially sound financial structure so that some measure of private credit is likely to be gained rather quickly with an upturn in business. It is better that carriers

not so situated should be permitted to avail themselves of the Bankruptcy Act. Nothing is to be gained by prolonging and intensifying unsound conditions.'"*

The table of increasing railroad receiverships set forth by the R. F. C. (R. F. C. Brief, pp. 76, 77), is proof that the chances of a railroad in weak financial condition pulling through by means of loans on collateral consisting of their system bonds in disproportionately large amounts, are meager, and that it is almost inevitable that its creditors will be sacrificed without any ultimate benefit to the road.

Furthermore, we have already mentioned (p. 22) that the loans in this case were not made as ordinary current bank loans on the basis of quick realization on the collateral. The original long term of the loans (about 19 months) and the character and amount of the collateral taken by the petitioners shows that they were not contemplating so-called quick loans (six months or less) on readily marketable securities or relying on a quick realization for their protection (R., pp. 44-55). Most of the collateral required by the R. F. C. was unlisted and had no ready market (R., p. 38; App. to R. F. C. brief, p. 41; 184 I. C. C. 597). The total face amount of the collateral required by the Banks and the R. F. C. to be given in pledge was so excessive as to show it was not of a type customarily taken by banks for really current loans (R., pp. 37-39). Clearly, it has not been the policy of the R. F. C. merely to make quick loans but on the contrary it was the primary purpose of its creation to furnish funds to institutions as well as railroads on "frozen" collateral having no market. In fact, a portion of the R. F. C. loan here was made to "bail out" these Banks to the extent of one-half of a "frozen" loan (App. to R. F. C. brief, pp. 27-29). That it was not the intention of Congress that the R. F. C. should make

* Cf. Wehle—"Railroad Reorganization Under Section 77 of the Bankruptcy Act"; 44 Y. L. Jour. 197, 202, footnote 21.

quick loans such as could be made at commercial banks, but that Congress intended that the R. F. C. should make loans only on "frozen" collateral, is conclusively shown by Section 5 of the R. F. C. Act quoted at page 80 of the R. F. C. brief providing that the R. F. C. could make loans to railroads only "when in the opinion of the board of directors of the corporation such railroads or railways **are unable to obtain funds upon reasonable terms through banking channels** or from the general public, and the corporation will be adequately secured."

However that may be, the real value of this collateral does not depend upon the fluctuating market value of the bonds, but lies in the value of the System properties upon which such bonds are a lien, and the bonds held as collateral constitute a lien on the System properties in an amount three times the face amount of the loans. The reports of the Interstate Commerce Commission approving the applications for the loans show that the Commission was relying solely on the value of the System properties underlying the mortgage bond collateral for the security of the loans. The Commission stressed the System's value for rate making purposes, and found it to be $594,090,000 compared with a capital structure at the time of $130,799,212 of capital stock and $317,372,895 of funded debt (App. to R. F. C. Brief, pp. 37-45; 184 I. C. C. 597).

In view of the low market quotations for the listed collateral and the absence of a market for the unlisted collateral and of the statement of the R. F. C. (R. F. C. Brief, p. 5) regarding its authority to purchase the collateral itself, it is obvious that the petitioners have no intention of actually realizing on the collateral by sale to third parties, but that they intend to sell to themselves and thus treble their claims. In this connection, we should also call attention to the assertion made by petitioners in the Circuit Court of Appeals that they did not contemplate the sale of the collateral. As to this, the Circuit Court of Appeals said (R., pp. 325-326):

> "Appellants' attack on the merits is somewhat unique. They do not object to the terms of the order for they do not contemplate the sale of the pledged collateral. They object to being ordered. If the court may make such an order, and we hold it can, little attention need be given to an objection which if sustained would be destructive of that cooperative action which is so essential in the readjustment of the debtor's debts and its capital structure or in the reorganization contemplated by Section 77."

Furthermore, holders of mortgage bonds are accorded the same treatment as the petitioners under Section 77. They are not permitted to foreclose and yet they are not receiving interest and, if the System properties behind the collateral held by the Banks and the R. F. C. are declining in value, the properties securing these mortgage bonds are also declining in value to the same extent because they are the same properties. So far as concerns the statement that the Banks and the R. F. C. were surprised to find that their remedy of selling collateral might be enjoined after the enactment of Section 77, the holders of mortgage bonds were equally surprised when they learned that their right to foreclose was to be enjoined under Section 77. And at any rate, it should have been no complete surprise to the petitioners herein because one of them, Mississippi Valley Trust Company, had previously been enjoined from the sale of similar collateral in the equity receivership of the Missouri, Kansas & Texas Railway.

> *Mississippi Valley Trust Company* v. *Railway Steel Spring Co.*, 258 Fed. 346 (C. C. A. 8th, 1919).

It should be borne in mind that no attack whatever has been made on the validity of the collateral or the position to be accorded the petitioners in the plan of reorganization on account of their holding this large amount of collateral. In fact, petitioners have received approximately $376,000

through distributions on their collateral between September 26, 1933, and October 24, 1934 (R., p. 342).

The R. F. C. contends that, if the Courts can enjoin the sale of collateral of this type in proceedings under Section 77, loans with collateral of this type will be discouraged contrary to the policy of Congress to foster such loans. It is unsound that a holding that there is a right to issue such injunctions will discourage loans. As we have pointed out right along, loans of this type are made, not on a quick realization basis, but on the long-view intrinsic worth of the System properties underlying the bonds comprised in the collateral. That this is so is shown by the fact that, according to a study of public statistics, since November, 1933, when this injunction was issued (the issuance of the injunction was widely known in railroad and financial circles and, of course, to the R. F. C. and these five Banks), at least $221,000,000 of loans to railroads on pledged collateral have been made by the R. F. C., the P. W. A. and by banks (including two of the petitioning banks). And Congress has not fostered loans with any particular type of security and the argument is unsound from that standpoint. If it were true, as the R. F. C. argues, that the existence of the right to issue such an injunction against the sale of pledged collateral under Section 77 will discourage such loans, then Congress has discouraged long-term mortgage loans for railroads by providing that foreclosure of mortgages may be enjoined under Section 77. The R. F. C. cannot mean that Congress is encouraging short-term loans as contrasted with long-term permanent mortgage financing for railroads when all the public statements of the Administration encourage permanent financing as opposed to temporary credit expedients. Here it is appropriate to call attention to the petitioners' assertion that if the issuance of an injunction against the sale of pledged collateral takes away the advantage of one class of creditors for the benefit of another, it is improperly discriminatory. Yet, this is just what has

occurred in the case of mortgage bonds, the foreclosure of which may be enjoined.

Conclusion.

The petitioners and the Banks try to deal with this application and appeal as if it were a dispute between private litigants, each striving to establish his rights in a fund or to diminish the other's claims,—that is, as if the holders of the System's outstanding bond issues and the Railway Company itself were attacking the Banks and the R. F. C. to diminish the claims of the latter or in order to take property rights from them.

This is not so. The order in question is purely an administrative and procedural matter and the dispute lies rather between the Federal District Court and the petitioners than between the respondents and the petitioners. The respondents are simply upholding the hands of the Federal District Court in its effort to administer this proceeding for the reorganization of the Rock Island System in such a way that a successful reorganization can take place and the System be placed once more on its own feet.

Congress has given the Federal District Court the onerous task of guiding the reorganization proceeding, of overcoming the many procedural obstacles and bringing the proceeding to a successful conclusion. The effectiveness of the reorganization machinery inserted by Congress in the Bankruptcy Act and the ability of the Federal District Courts to operate that machinery and put many of our major railroad systems back on their feet and restore to good standing their securities, which are in the hands of life insurance companies, savings banks, trustees and other investors, is at stake. With this issue raised at a time when every effort of the administration and the Federal and State Governments is bent along constructive lines any mere procedural inconvenience which may be suffered by the R. F. C. and the Banks should not bear great weight.

The Federal District Court through its handling of all the phases of this particular reorganization proceeding

has a broad background against which it can view the obstacles to the completion of its task—a successful reorganization—and is in the best position to determine, and has determined, that the sale of this collateral is such a major obstacle that an injunction against the sale was necessary to effect a reorganization and carry out the sole purpose of the proceeding. The Circuit Court of Appeals has confirmed this determination.

We submit that this Court should view this determination of the Courts below on this administrative matter, vitally affecting their efforts to accomplish a reorganization, even more sympathetically than their determination of a question merely involving the private rights of two litigants. We urge that it should not render a decision which would result in impeding the steps taken by the District Court in furtherance of its onerous duty unless the District Court has acted without any shadow of authority. This the District Court has not done. On the contrary, it had ample power and authority for the order, as the Circuit Court of Appeals has held and as has been shown herein.

The Order of the District Court should be affirmed.

Respectfully submitted,

ELIHU ROOT, JR.,
31 Nassau Street, New York, N. Y.,
Attorney for Protective Committee for Debtor's First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds.

WILKIE BUSHBY,
JOSEPH SCHREIBER,
Of Counsel.

GEORGE W. WICKERSHAM,
14 Wall Street, New York, N. Y.,
Attorney for Protective Committee for Debtor's 30-Year 4½% Convertible Gold Bonds.

W. LLOYD KITCHEL,
EUGENE J. CONROY,
Of Counsel.

EDWARD C. BAILLY,
15 Broad Street, New York, N. Y.,
Attorney for Protective Committee for the Consolidated First Mortgage 5% Bonds of the Burlington, Cedar Rapids & Northern Railway Company.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

Nos. 479-490.

In the Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY CO., *Debtor.*

Nos. 479 and 480
CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY, *Petitioner,* v. THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., *Respondents.*

Nos. 481 and 482
THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, *Petitioner,* v. THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., *Respondents.*

Nos. 483 and 484
MISSISSIPPI VALLEY TRUST COMPANY, *Petitioner,* v. THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., *Respondents.*

Nos. 485 and 486
HARRIS TRUST & SAVINGS BANK, *Petitioner, v.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., *Respondents.*

Nos. 487 and 488
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RECONSTRUCTION FINANCE CORPORATION, *Petitioner,* v. THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., *Respondents.*

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF RESPONDENT, PROTECTIVE COMMITTEE FOR THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY GENERAL MORTGAGE BONDS

JAMES H. McINTOSH,
CLIFTON P. WILLIAMSON,
EDWARD W. BOURNE,
Attorneys for Respondent,
Protective Committee for The Chicago, Rock Island & Pacific Railway Company General Mortgage Bonds.

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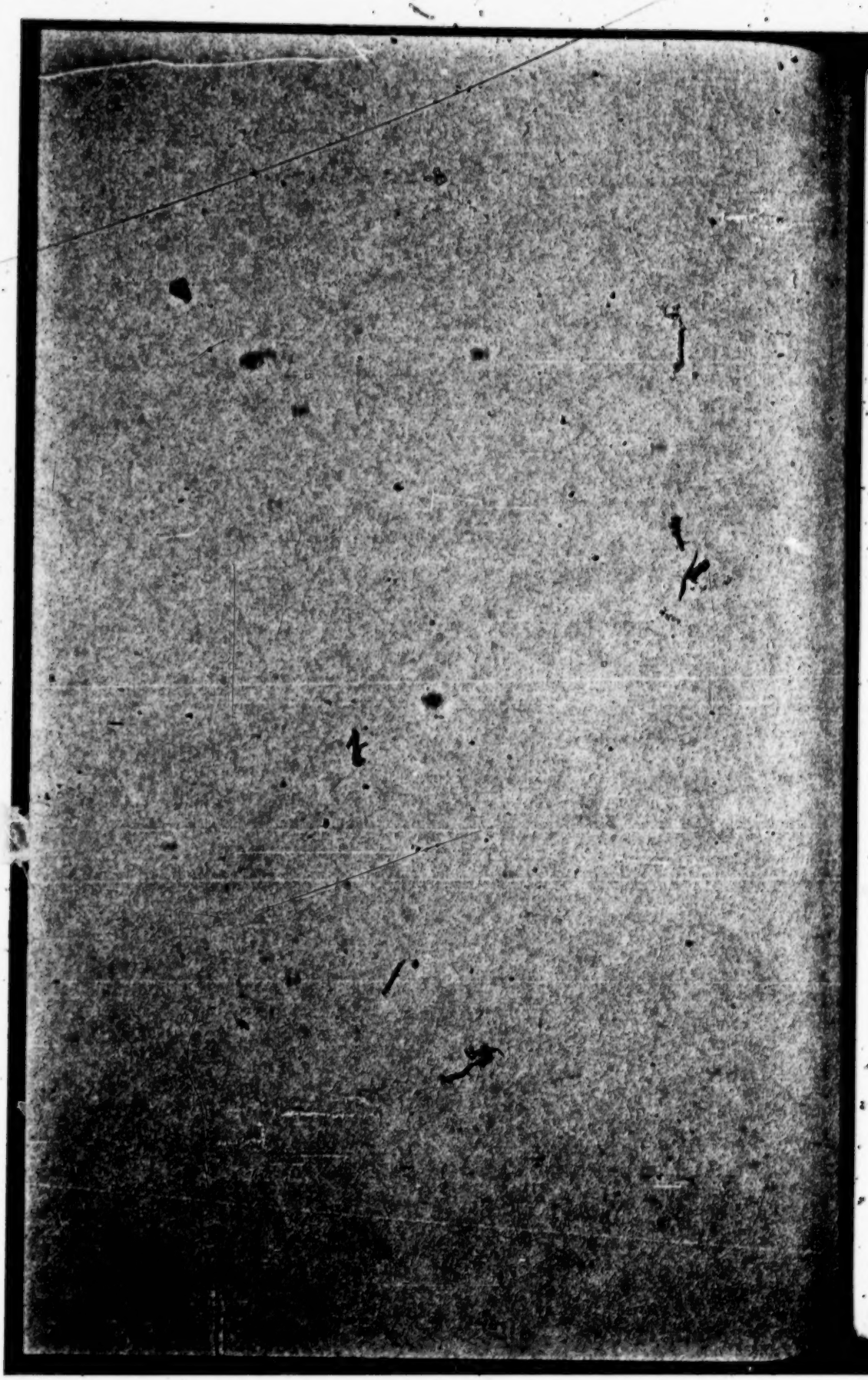

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

Nos. 479-490.

In The Matter of
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY CO., *Debtor.*

Nos. 479 and 480
CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY, *Petitioner,* v. THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., *Respondents.*

Nos. 481 and 482
THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, *Petitioner,* v. THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., *Respondents.*

Nos. 483 and 484
MISSISSIPPI VALLEY TRUST COMPANY, *Petitioner, v.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., *Respondents.*

Nos. 485 and 486
HARRIS TRUST & SAVINGS BANK, *Petitioner, v.* THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, ET AL., *Respondents.*

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BRIEF OF RESPONDENT, PROTECTIVE COMMITTEE FOR THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY GENERAL MORTGAGE BONDS

Opinions Below

No opinion was rendered by the District Court. The opinion of the Circuit Court of Appeals (R. 313-326) is reported in 72 Fed. (2nd) 443.

Jurisdiction

The jurisdiction of this Court rests upon Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, pursuant to which writs of certiorari were granted on December 3, 1934.

Question Presented

The question presented is whether a Court having jurisdiction under Section 77 of the Bankruptcy Law of the estates of a Railroad Corporation Debtor and several Subsidiary Debtors may control attempts by a secured creditor of the Debtor to transfer after the commencement of the proceeding mortgage bonds of the Principal Debtor and mortgage bonds of the Subsidiary Debtors which are held to secure the creditor's single claim, if the effect of such transfers would be to alter the classes of "creditors," as defined in Section 77, and to change the framework on which a plan of reorganization would have to be based.

Statement of the Case.

1. The Debtors in the Proceeding:

On June 7, 1933, The Chicago, Rock Island & Pacific Railway Company filed a petition under Section 77 of the Bankruptcy Law, thus commencing this proceeding. It is hereinafter referred to as the "Principal Debtor."

Subsequently various subsidiaries of the Principal Debtor filed similar petitions, as provided by subdivision (a) of Section 77 (Appendix to R. F. C. Brief, p. 91), and thus became debtors *in the same proceeding*. They included (R. 23-28, 92-100): St. Paul and Kansas City Short Line R. R.

Co., Rock Island, Arkansas and Louisiana R. R. Co., Chicago, Rock Island & Gulf Railway Co., Rock Island and Dardanelle Railway Co., Rock Island Memphis Terminal Railway Co., and Rock Island Omaha Terminal Railway Co. These six companies are hereinafter referred to as the "Subsidiary Debtors."

The fact that these Subsidiary Debtors are Debtors *in this same proceeding* is of the greatest importance, for the "collateral" affected by the order under review consisted principally of mortgage bonds issued by the Principal Debtor or by the Subsidiary Debtors, and represented fractional interests in liens on property in the several estates under the jurisdiction of the Court.

The Petitioners' Briefs refer to these Subsidiary Debtors as if they were merely subsidiaries of the Debtor, and as if there were only one Debtor. But they are Debtors in this same proceeding.

The several estates are being administered in only one proceeding (R. 26-28, 97-99), as Section 77 clearly intended they should be (Appendix to R. F. C. Brief, p. 91). Any order made in the proceeding can, therefore, properly affect the several estates. And, to the extent that the order under review related to interests in property in the estate of a Subsidiary Debtor, it affected property which was just as clearly under the jurisdiction of the Court as the property in the estate of the Principal Debtor.

2. The Other Parties to the Proceeding:

The Petitioners and the Trustees of the Principal Debtor will have set forth their own status in the proceeding.

The two Committees which filed pleadings or affidavits in connection with the order appealed from are the General

Mortgage Committee and the First and Refunding Committee.

The Protective Committee for The Chicago, Rock Island & Pacific Railway Company General Mortgage 4% Bonds of 1988, represents the holders of the Principal Debtor's General Mortgage Bonds (R. 32-33). The General Mortgage, which was executed on January 1, 1908 and matures on January 1, 1988, provided for the issuance of $100,000,000 of Bonds, of which $99,981,000 have been actually issued (R. 33, 59). Of this amount, $61,581,000 are outstanding in the hands of the public, and $38,400,000 are pledged to secure the Principal Debtor's First and Refunding Mortgage (R. 33, 59).

The General Mortgage is a first lien on more than 3,000 miles of railway (R. 33, 60), "principally main lines, on which the traffic is heaviest and which are among the most valuable lines of the Debtor" (R. 60). The interests of the holders of the General Mortgage Bonds are, therefore, those of *holders of a main line first mortgage.*

The General Mortgage Committee is interested in sustaining the order under review for two reasons:

First, because such an order seems essential if a plan of reorganization is to be formulated;

Second, because the order was to some extent occasioned by the effort of the pledgees to force the payment of interest on their claims, although the interest had not been earned and the payment of the interest required the diversion of General Mortgage earnings for that purpose.

3. The Position of the General Mortgage Committee as Compared With the Position of the Other Respondents:

The position of the General Mortgage Committee is that the order under review is plainly right as to substantially all

of the collateral affected thereby and that it is right as to such collateral *because of the nature of the collateral.*

The grounds on which this position is based may differ to some extent, or even substantially, from those urged by other Respondents. It is only fair to them to point out that the General Mortgage Committee represents holders of underlying mortgage bonds and is not necessarily disposed to accept as "liberal" a construction (R. 323) of Section 77 as the representatives of junior interests may think proper.

The General Mortgage Committee considers it unnecessary to determine how "liberally" Section 77 should be construed. The Committee believes that, so far as this case is concerned, the effect of Section 77 is clear, whether it be "liberally" construed or not.

And we shall make no effort to discuss many of the subjects referred to in the Briefs of the Petitioners, particularly that of the Reconstruction Finance Corporation (pp. 70-89). Pledgees, like mortgage bondholders, have valuable contracts, and prior to bankruptcy have valuable remedies. Bankruptcy affects their remedies. To what extent their remedies are affected by bankruptcy is a question of law as to which the statutes and interpretations thereof are controlling. It is a matter of importance that the law be clearly established on the questions here presented. But we are unable to apprehend why a different rule of law should be established for Reconstruction Finance Corporation because of its charter powers (R. F. C. Brief, pp. 65-70), or how any question of economic policy is presented (*id.*, pp. 70-89).

4. The Necessity for the Order Below; the Relation Thereto of the Pledgees' Demands for Interest:

The necessity for the order under review arose because of the effect of any transfer of the collateral by the pledgees, if recognized as having any validity, on the possibility of formulating a plan of reorganization and carrying it through the many stages required by Section 77 of the Bankruptcy Act (see below, pp. 14-37).

This necessity existed whether interest was paid on the pledgees' claims or not. But it is clear that the demand of the pledgees that interest be paid on their claims, whether earned by their collateral or not, was a factor in inducing the other parties in interest to obtain the order below (R. 14, 20, 29, 40, 42, 76-77). For the latter were satisfied that if interest were paid on the pledgees' claims they would not transfer the collateral, whereas, if it were not, they might (R. 14, 20, 29).

It is equally clear that, in order to make the most of the situation (R. 76-77) and to induce further interest payments, the pledgees took the most extreme possible position when the Debtor's petition for the injunction order was filed (R. 68-75). Instead of suggesting terms and conditions on which transfers might have been permitted, they challenged the jurisdiction of the Court and its power to act in the matter at all (*id.*). Now, however, they protest that the order was arbitrary, because it contains no limitations of time or other conditions, although they suggested none.

The position of the General Mortgage Committee is that interest should never have been paid to the pledgees at all (R. 32-35, 59-63), and if the statement of the Circuit Court of Appeals on the subject (R. 325) is to be construed as implying that interest was properly paid and should be continued, it was erroneous. Because the matter is one

which concerns the General Mortgage bondholders materially, we are including a statement about it, so that the record for this Court will be clear and readily available (see below, pp. 53-55).

But it is plain that the matter of the interest on the pledgees' claims, and any misunderstanding of the Circuit Court of Appeals on the subject (if there was one), has nothing to do with the question of the power of the Court to make the order under review. And, as will appear below, only that question is involved here.

5. The Order Under Review and the Record on Which It Was Made:

The order under review restrained the pledgees from "selling" their "collateral" (R. 101-104).

As will appear below, the collateral consisted almost entirely of interests in the several estates which the Court was administering.

Much is now said of supposed deficiencies in the petition and other papers on which the order was made (Brief for R. F. C., pp. 21-32). But the same Petitioner prints an Appendix containing considerable data not in the record, and refers to New York Stock Exchange Quotations (pp. 10-11) and many other things not in the record or in the Appendix to its Brief.

We take it that this Court can examine the entire record to ascertain the facts, which are not substantially controverted.

6. The Pledgees' Collateral:

The pledgees' claims total $17,784,877. The face amount of their collateral is $54,711,465 (R. 36-39).

The nature of the pledgees' collateral is, we think, the crucial factor in this case. It is listed in the Principal

Debtor's petition on which the order under review was entered (R. 37-39). It falls into four classes:

First: Mortgage Bonds issued by the Principal Debtor, which are a lien on property of the Principal Debtor, and which, if owned outright, would constitute obligations of the Principal Debtor.

The bonds falling in this class are The Chicago, Rock Island & Pacific Railway Company First and Refunding 4% Bonds (R. 4), which were pledged as follows (R. 36-39):

Reconstruction Finance Corporation	$7,575,000
Chase National Bank	3,253,000
Continental Illinois Bank & Trust Co.	1,307,000
New York Trust Company	800,000
Harris Trust and Savings Bank	405,000
Mississippi Valley Trust Company	190,000
	$13,530,000

Second: Mortgage Bonds issued by a Subsidiary Debtor, but Guaranteed by the Principal Debtor. They are a lien on property of the Subsidiary Debtor, which is operated under lease by the Principal Debtor. If owned outright, they would constitute obligations of both the Principal Debtor and the Subsidiary Debtor.

The bonds in this class include the St. Paul & Kansas City Short Line First Mortgage Bonds and the Rock Island, Arkansas and Louisiana Railroad Company First Mortgage Bonds.

Each of these corporations is a wholly owned subsidiary of the Principal Debtor (R. 23); all of the properties of each are operated by the Principal Debtor under leases for 99 years and 999 years respectively (R. 23); the Bonds of the two subsidiaries are guaranteed by the Principal Debtor (R. 4, 29, 20-21, 31); and the two Subsidiary Debtors are Debtors in this same proceeding (R. 23-28).

The St. Paul & Kansas City Short Line First Mortgage Bonds are pledged as follows (R. 37-39):

Reconstruction Finance Corporation	$9,374,500
Chase National Bank	3,956,000
Continental Illinois Bank & Trust Co.	2,758,000
New York Trust Company	1,010,000
Harris Trust and Savings Bank	490,000
Mississippi Valley Trust Company	240,000
	$17,828,500

Rock Island, Arkansas and Louisiana First Mortgage Bonds are pledged as follows (R. 37):

Reconstruction Finance Corporation	$3,862,000

All of the collateral held by the Banks falls in the two foregoing classes.

Third: Bonds issued by a wholly owned Subsidiary Debtor, but which are not guaranteed by the Principal Debtor.

This class includes the following bonds pledged to Reconstruction Finance Corporation (R. 38, 92-99):

The Chicago, Rock Island & Gulf Railway Co. Extension First Mortgage Bonds	$6,927,000
The Chicago, Rock Island & Gulf Railway Co. Carrollton Branch Bonds	331,000
Rock Island and Dardenelle Railway Company First Mortgage Bonds	100,000
Rock Island Memphis Terminal Depot First Mortgage Bonds	900,000
Rock Island Memphis Terminal First Mortgage Bonds	400,000
Rock Island Omaha Terminal First Mortgage Bonds	906,000
	$9,564,000

Of the four Subsidiary Debtors which issued these bonds, all except The Chicago, Rock Island and Gulf Railway Company are operated under lease by the Principal Debtor (R. 92-94).

Fourth: Other Collateral.

The remaining collateral, all of which is pledged to the Reconstruction Finance Corporation, was as follows (R. 38):

Kankakee & Seneca Railroad Company 4½% Bonds	$352,000.00
Rock Island Improvement Company:	
Blue Island Shops Bonds	199,000.00
Cedar Rapids Terminal Bonds	369,732.99
Little Rock Mortgage Bonds	278,492.49
Peoria Terminal Mortgage Bonds	290,247.86
First and Collateral 5% Bonds	3,310,000.00
Trinity & Brazos Valley Receiver's Certificates	747,492.51
Trinity & Brazos Valley First Mortgage Bonds (now pledged under Colorado & Southern Mortgage; C. R. I. & P. has agreed to pledge them with Reconstruction Finance Corporation upon release from that Mortgage May 1, 1935)	4,380,000.00
	$9,926,965.85
Assignment of Company's distributive share in assets of Railroad Credit Corporation, approximately	$1,400,000.00

With respect to the mortgage bonds falling in this class of collateral, the petition on which the order under review was entered alleged that the bonds were "First Mortgage Bonds of subsidiary companies of the Debtor's System" (R. 38). This allegation is uncontroverted. The Appendix to

the Reconstruction Finance Corporation Brief contains the following from the Interstate Commerce Commission Report approving the loan with regard to the Rock Island Improvement Company Bonds (p. 37; see also pp. 38-39, 73-74):

> "The applicant states that all of the aforesaid collateral consists of first-mortgage bonds representing the only existing liens upon railroad and terminal properties in important cities used by and in the interest of the applicant and essential to the operation of its railroad system."

Summary of the Argument.

I. This case does not involve the right of pledgees to sell ordinary collateral.

II. The pledged Chicago, Rock Island & Pacific Railway Company First and Refunding Bonds do not represent debts of the Principal Debtor, but merely fractional interests, held as security only, in property which is part of the Principal Debtor's estate.

III. As a result of the commencement of the proceeding under Section 77 of the Bankruptcy Law, each pledgee is simply a secured creditor of the Principal Debtor, holding a single claim. Transfers of the pledged First and Refunding Bonds, if recognized, would be merely transfers of ratable shares of the lien of the mortgage. No pledgee has any power to transform the pledged bonds into debts by transferring them to someone else.

IV. Section 77 of the Bankruptcy Act contemplates action by the various classes of creditors, and presupposes that the classes shall be fixed as of the commencement of the proceeding. The transfer of the pledged First and Re-

funding bonds, if recognized in the bankruptcy court, would create a new class of "creditors" as defined in Section 77.

The formulation of a plan of reorganization would be impossible if transfers of the bonds were to be permitted without control and recognized, because it would be impossible to know what classes to provide for and what claims.

V. The assignment after bankruptcy of claims against or interests in a bankrupt estate is not a matter of constitutional right, and such assignments are subject to such control as may be authorized by statute.

VI. Even if we are wrong in assuming that transferees of the pledged First and Refunding Bonds could not prove claims for the face amount thereof (as distinguished from sharing in the lien of the First and Refunding Mortgage), the Court was clearly authorized to restrain any transfers thereof. For, in that event, transfers of the bonds would increase the amount of a class of creditors and thus seriously complicate the consummation of a plan, which is supposed to be executed through the action of a definite percentage of a fixed class.

VII. The order under review is not arbitrary. If it appears to be arbitrary it is only because the petitioners made no suggestion as to any limitations of time or other conditions. Reasonable time limitations and conditions can no doubt be obtained on proper application to the District Court.

VIII. The same principles apply to the pledged St. Paul & Kansas City Short Line Railroad Co. First Mortgage Bonds and the Rock Island, Arkansas & Louisiana Railroad Co. First Mortgage Bonds.

IX. The order under review is authorized as to the bonds of the Subsidiary Debtors even if not guaranteed by the Principal Debtor, as transfers thereof would have created new classes of creditors to be provided for in the plan of reorganization.

X. No point was made below by Reconstruction Finance Corporation with regard to collateral pledged to it which consisted of Mortgage bonds not issued by the Principal Debtor or any of the Subsidiary Debtors.

XI. None of the cases cited by the Petitioners establishes anything contrary to the conclusions expressed above.

XII. The Petitioners are not entitled to interest on their claims after the bankruptcy proceeding commenced.

ARGUMENT

I.

This case does not involve the right of pledgees to sell ordinary collateral.

We do not understand that either in equity or in bankruptcy (including Section 77 of the Bankruptcy Act) a Court has the power to enjoin or control the sale by a pledgee of ordinary collateral. By "ordinary collateral" we mean mortgage bonds or other securities which do not represent any interest in the estate or estates which the Court is administering.

Even assuming that Congress has the power under the Constitution to enjoin the sale of "ordinary collateral" pledged by a bankrupt, we find nothing in Section 77 which indicates that Congress intended to change the rule uni-

versally applied in equity and bankruptcy with respect to "ordinary collateral."

It follows that there is no constitutional question in the case. Nor is there any question of the Court's jurisdiction, since its order related to the transfer of interests in property in the estates which the Court was administering, over which it had jurisdiction *in rem*.

Compare *Straton* v. *New*, 283 U. S. 318, 321.

Nor, we think, is it necessary to determine whether Section 77 should receive a "liberal construction." The General Mortgage Committee, representing underlying bonds, is not necessarily in accord with junior interests as to the "liberal construction" to be given Section 77 (R. 323).

But the order under review was plainly authorized, as to the collateral we will consider, whether Section 77 is given a "liberal construction" or not. The order was authorized as a matter of *necessary construction*, for, in the absence of such an order, it would have been impossible even to formulate a plan of reorganization.

II.

The pledged Chicago, Rock Island & Pacific Railway Company First and Refunding Bonds do not represent debts of the Chicago, Rock Island & Pacific Railway Company. They merely represent fractional interests, held as security only, in property which is part of the principal debtor's estate.

In considering the nature of the collateral with which the Court was dealing we will discuss first The Chicago, Rock Island & Pacific Railway Company First and Refunding Mortgage Bonds, because the points which we wish to

bring out can be stated most simply with regard to the First and Refunding Bonds, and we can then consider to what extent those points apply to the other collateral.

A. The status of the pledged First and Refunding Bonds prior to the bankruptcy.

At the commencement of the proceeding each First and Refunding Bond, *if owned outright by a creditor,* had two attributes. It constituted:

(1) an obligation of The Chicago, Rock Island & Pacific Railway Company to pay the amount of money specified in the bond, and

(2) a fractional interest in the lien of the mortgage held to secure the obligation named in the bond.

It is quite obvious, however, that a *pledged* First and Refunding Bond did not have the same two attributes. For example, if we take the Bonds pledged to the Chase National Bank of New York (R. 39), we find that

(1) such a pledged bond was *not* a debt or obligation of The Chicago, Rock Island & Pacific Railway Company, for the debt which the latter owed the Chase National Bank was $2,000,000, and the face amount of the pledged First and Refunding Bonds held by the Chase National Bank (in addition to other collateral) was $3,253,000;

(2) such a pledged bond did represent a fractional interest in the First and Refunding Mortgage held as security only; but the fractional interest so held did not secure a claim for the face of the bond, and was simply part of pledged property securing a debt or claim of $2,000,000.

The fact that on their face the pledged bonds may not have been distinguishable from the bonds owned outright

except by their numbers is immaterial. *They were not debts* and no one treated them as such. The amounts specified in the bonds simply determined the extent of the fractional interests in the lien of the mortgage held as security for the single debt to the Chase National Bank. The words in the bonds, phrased as promises to pay money, had given rise to no obligation to pay the amounts specified in the bonds.

B. When the order appealed from was entered in the District Court on November 22, 1933, the pledged bonds still had the same attributes which they had before the commencement of the proceeding.

Leaving aside for the moment all questions as to the effect of the commencement of the proceeding or the order appealed from, it is evident that, since the pledged bonds were held by the pledgees on November 22, 1933, and are still so held, they did not constitute debts on November 22, 1933, and do not constitute debts today, any more than they did the day they were pledged.

III.

As a result of the commencement of the proceeding under Section 77 of the Bankruptcy Law, each pledgee is simply a secured creditor of the principal debtor, holding a single claim. Transfers of the pledged First and Refunding Bonds, if recognized, would be merely transfers of ratable shares of the lien of the mortgage. No pledgee has any power to transform the pledged bonds into debts by transferring them to someone else.

Irrespective of the order appealed from, *the commencement of the bankruptcy proceeding* had an immediate and

important effect on the rights and remedies theretofore available to the pledgees, and that effect followed constitutionally and necessarily by virtue of the provisions of the Bankruptcy Act itself.

As a preliminary to a consideration of the effect of the bankruptcy of the Principal Debtor, we wish to emphasize the fact that the pledgees not only loaned money to a railroad corporation which became bankrupt, but that they loaned it principally, and in some cases solely, on the security of bonds of that bankrupt. There is no reason why the bankruptcy of the Principal Debtor should not have, and should not have been expected to have, an important effect on the rights and remedies of the pledgees. Much as the pledgees may now write of the liquid character of the loans they made, it is clear that the security they took was very different from what it would have been if it had consisted of bonds of companies other than the bankrupt.

A. The status of the pledged bonds is to be determined by the Bankruptcy Act.

Subdivision (n) of Section 77 provides:

> "In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and his property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."

No provision could be clearer. Where "consistent with the provisions of Section 77 the rights * * * of creditors and of all persons with respect to the debtor and his (*sic*)

property shall be the same as if" The Chicago, Rock Island & Pacific Railway Company had been adjudicated a bankrupt on June 7, 1933 (R. 2-5).

It is true that under Section 77 there will be no such liquidation as takes place in an ordinary bankruptcy proceeding. But "claims and interests" in a debtor's estate, including secured claims, must be valued before the provision to be made for them can be decided upon (subdivision [g]; Appendix to R. F. C. Brief, pp. 101-102). The valuations may not be formal ones, represented by orders or decrees, but the plan must reflect proper appraisals of the respective "claims and interests" to be affected; otherwise the plan will not be equitable (subdivisions [d] and [g], Appendix to R. F. C. Brief, pp. 98, 101).

In an ordinary bankruptcy mortgaged properties or any proceeds thereof are distributable to the mortgagees, unless there be an excess over the liens; if there be one, it becomes part of the free assets of the estate. Secured creditors have both their security and, if that is inadequate, deficiency claims based on the amount of the debts due them (Section 57 [h]). Deficiency claims result in dividends out of the free assets. Under Section 77 there will, we assume, be no actual dividends out of free assets, but the right to such a dividend if there were a liquidation and distribution is an element of value in a secured creditor's claim which must be recognized in determining what a secured creditor shall receive. In discussing the rights of the Petitioners, we shall consider the situation as if there were to be an actual distribution of the free assets in the estates of the several Debtors, since for all practical purposes the situation is just the same as if there would be such a distribution.

B. In bankruptcy a creditor holding unsecured bonds of the bankrupt as security cannot prove a claim on the bonds themselves, but can only prove for the amount actually owing.

It is elementary that, with certain exceptions not material here, a debt must be *owing* at the commencement of a bankruptcy proceeding in order to be the basis of a provable claim which will entitle the holder to share in the free assets of the estate.

Section 63 (a) of the Act provides:

> "*a*, Debts of the bankrupt may be proved and allowed against his estate which are (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) due as costs taxable against an involuntary bankrupt who was at the time of the filing of the petition against him plaintiff in a cause of action which would pass to the trustee and which the trustee declines to prosecute after notice; (3) founded upon a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a provable debt; (4) founded upon an open account, or upon a contract express or implied; and (5) founded upon provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less cost incurred and interests accrued after the filing of the petition and up to the time of the entry of such judgments."

The date of the commencement of the proceeding is controlling. In *Zavelo* v. *Reeves*, 227 U. S. 625, at page 631, the Court said:

"But, reading the whole of Sec. 63, and considering it in connection with the spirit and purpose of the act, we deem it plain that the debts founded upon open account or upon contract, express or implied, that are provable under Sec. 63a 4 include only such as existed at the time of the filing of the petition in bankruptcy. This court in effect adopted that construction when, in promulgating the General Orders and Forms in Bankruptcy, 1898, under the authority conferred by Sec. 30, a form of discharge was prescribed (Forms in Bankruptcy, No. 59), by which it is ordered that the bankrupt 'be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the day of A. D., on which day the petition for adjudication was filed him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.' And the forms prescribed for proof of debts all declare that the indebtedness existed 'at and before the filing of the said petition.' Forms 31 to 36, inclusive. The General Orders and Forms, etc., are to be found in 172 U. S., Appendix; 89 Fed. Rep. Preface; 32 C. C. A., Preface, 3 Foster's Fed. Pract. (4th ed.) 2526, 2559, 2572."

Forms 31-36, promulgated by this Court and referred to in the *Zavelo* case, all contain an allegation that the bankrupt "was *at and before the filing of said petition*, and still is justly and truly indebted to," etc.

The proposition that a creditor to whom a single debt is owed can prove only a single claim, regardless of the number of unsecured notes or bonds he may hold as "collateral," is well established.

First National Bank of Beaumont v. *Eason* (C. C. A. 5th), 149 Fed. 204;

John Matthews, Inc. v. *Knickerbocker Trust Co.* (C. C. A. 2nd), 192 Fed. 557;

In re Wise Shoes (D. C. S. D. N. Y.), 2 Fed. Supp. 521.

The same rule has been applied in equity.

Union Nat. Bank v. *Peoples Savings & Trust Co.* (C. C. A. 3rd), 28 Fed. 2nd 326;
In re Waddell-Entz Co., 67 Conn. 324;
Third National Bank v. *Eastern R. R. Co.*, 122 Mass. 240;
People v. *Remington*, 54 Hun 480; 121 N. Y. 675.

All the Petitioners apparently concede the correctness of the views above expressed as applied to unsecured bonds pledged by a bankrupt (see R. F. C. Brief, pp. 34, 44-46; Banks' Brief, p. 18).

C. In bankruptcy a creditor holding a mortgage bond of the bankrupt as security only cannot prove a claim on the bond (as distinguished from sharing in the lien of the mortgage), but can only prove for the debt actually owing.

It is obvious that the *principles* applicable to an unsecured bond of a bankrupt held by the bankrupt's creditor as security only must control a mortgage bond of the bankrupt similarly held *as to the matter of proving a deficiency claim based on the amount specified in the bond.* If an unsecured bond of a bankrupt held as security is not a "fixed liability • • • absolutely owing" within the meaning of Section 63 (a) of the Bankruptcy Act, neither is a mortgage bond of a bankrupt similarly held. A pledged mortgage bond of a bankrupt will entitle the pledgee to the benefit of his ratable share of the property subject to the mortgage, and to that extent differs from an unsecured bond of the bankrupt similarly held. But *there is no valid distinction, so far as concerns the*

matter of proving claims in order to share in the free assets, between a pledged unsecured bond and a pledged mortgage bond of a bankrupt.

In re Battle Island Paper Co. (N. D. N. Y.), 259 Fed. 921, is a bankruptcy case in point, as a careful reading will show (pp. 924-926).

And the rule has been applied in equity.

Hitner v. *Diamond State Steel Co.* (C. C. Del.), 176 Fed. 384, 397;
Dibert v. *D'Arcy,* 248 Mo. 617.

An equity case stating the rule is *In re Waddell-Entz Co.,* 67 Conn. 324, from which we quote an excerpt to be found in the Reconstruction Finance Corporation Brief at page 46, footnote 5:

> "A debtor's additional promises to pay cannot, from the very nature of the case, be treated as collateral security for his debt, unless such additional promises are themselves secured by a lien on property or by the obligations of third persons; under such circumstances they may be treated as collateral security so far as is necessary to obtain the benefit of the lien or obligation."

The distinction is well illustrated by this very case. The Petitioners have provable claims against the Principal Debtor, the amount of which will determine their respective shares in the free assets of the Principal Debtor. They also hold First and Refunding Bonds as collateral. They cannot prove claims on the First and Refunding Bonds in order to share in the free assets in the estate of the Principal Debtor. But they have ratable shares in the lien of First and Refunding Mortgage. Having such ratable shares, they have received their proper fractions of everything the Trustees

of the First and Refunding Mortgage have collected during this proceeding on the collateral subject to that mortgage. (R. 341-342). And the pledgees will be entitled to have the value of their ratable shares in the lien of the First and Refunding Mortgage considered in determining what provision is to be made for them in a plan of reorganization.

In other words, while the First and Refunding Mortgage Bonds in the hands of the pledgees have a real value because they constitute ratable shares in the lien of the First and Refunding Mortgage, they do not have either the same value or the same attributes as the bonds which are owned outright. The latter constitute *debts* of the Principal Debtor, and entitle the holders to share in the Principal Debtor's free assets if the security is inadequate. The pledged bonds do not.

D. If the pledged bonds did not constitute debts when the Principal Debtor filed its petition under Section 77, transfers thereof by the pledgees, if recognized, will merely convey to the transferees ratable shares in the lien of the mortgage. For the pledgees cannot transform the pledged bonds into debts by the mere act of transferring them to someone else after the bankruptcy.

If we assume that the pledgees could transfer the pledged First and Refunding Bonds except for the order under review, it is clear that the effect of transfers thereof would have to be to separate the pledged bonds from the debts to the respective pledgees, or else any transfers would be futile.

For example, the Chase National Bank holds $3,253,000 of the First and Refunding Bonds subject to the condition that, if more than $2,000,000, the debt owing to it, be realized on all the collateral it holds, any "equity" will be turned over to the Principal Debtor's estate. Obviously the Chase

National Bank wishes to be free to make an *effective* transfer, one which will enable the transferee to realize on the transferred bonds without any restriction or any duty to account for any "equity."

It follows, therefore, that what the pledgees wish to do is to transfer ratable shares of the lien of the First and Refunding Mortgage, to be held by the transferees free and clear from any duty, such as is now owed by the pledgees, to account for any "equity" which may be ultimately realized thereon. Assuming that the pledgees can do this, if permitted to do so by the Court, it is clear that they cannot also transform the pledged First and Refunding Bonds into debts by the mere act of transferring them to some one else.

This proposition is necessarily true, because under Section 63 (a) *the test is whether the pledged bonds constituted fixed liabilities "absolutely owing" when the proceeding commenced.*

A recent able article in the Harvard Law Review, Vol. XVII, at pages 1092-1126, entitled *"A Form of Depression Finance-Corporations Pledging Their Own Bonds,"* by Sinclair Hatch, points out clearly that even if a pledgee is allowed to transfer mortgage bonds of a bankrupt held as collateral, it does not mean that the purchaser can prove a claim for the face of the pledged bonds, as distinguished from sharing ratably in the lien of the mortgage (pp. 1119-1120). The author correctly analyzes (pp. 1123-1124) the case of *In re Battle Island Paper Co.*, 259 Fed. 921, referred to above, in which the Court, inferentially at least, held that a pledgee could not give a third party a right to prove a deficiency claim on mortgage bonds on which the pledgee itself could not prove a claim.

It seems to us clear that unless all the cases cited at pages 20-22 above were erroneously decided, a pledgee of

mortgage bonds of a bankrupt has no power after the bankruptcy proceeding has commenced to "sell his collateral," if by that is meant to convey to a purchaser mortgage bonds having the same attributes as bonds of the same issue already outstanding in the hands of outright purchasers. For in one respect a mortgage bond is exactly like an unsecured bond—it contains words embodying a promise to pay money—and if a pledgee of an unsecured bond of a bankrupt cannot prove a claim in order to share in unmortgaged assets, and cannot give any one else the power to prove such a claim by transferring the bond, there is no rational basis for holding that a pledgee of a mortgage bond of a bankrupt can prove or give anyone else the power to prove on such a bond for the purpose of sharing in the free assets of the bankrupt.

Indeed, it would be incongruous to hold that the Chase National Bank, for example, cannot prove a claim for $3,253,000 in order to share in the free assets, because the debt to it is only $2,000,000, but that, *after the bankruptcy,* the Chase can transfer the First and Refunding Bonds to someone else who can prove a claim for $3,253,000. If such were the law, would not every secured creditor holding mortgage bonds of a bankrupt transfer them, because in the hands of a transferee they would have a greater value than in his own hands, and he could realize that greater value by making a transfer?

In the last analysis, the question is whether the principle that two claims cannot be proved on a single debt is sound. It seems to be well established. If it is sound, there is no rational basis for failing to apply it irrespective of transfers made after bankruptcy, and to mortgage bonds as well as to unsecured bonds.

E. The fact that the pledged mortgage bonds may appear from a casual inspection to be negotiable instruments is immaterial.

"The filing of the petition is a *caveat* to all the world and in fact an attachment and injunction."

May v. *Henderson,* 268 U. S. 111, 117;
Gross v. *Irving Trust Co.,* 289 U. S. 342, 344.

And see

In re Charles R. Partridge Lumber Co. (D. C. N. J.), 215 Fed. 973, 975.

In other words, when bankruptcy takes place, the Bankruptcy Law simply supersedes the Negotiable Instruments Law *as to matters affecting the distribution of the bankrupt estate,* such as the status of pledged bonds which represent fractional interests in property in the estate.

F. Decisions relating to transfers of pledged collateral in equity proceedings have no bearing here.

An equity proceeding is not a statutory proceeding. The filing of a creditor's bill is not the equivalent of a petition in bankruptcy.

Wm. Filene's Sons Co. v. *Weed,* 245 U. S. 597, 601.

We have cited certain equity cases because the principles they announce apply *a fortiori* to a bankruptcy case in view of the express provisions of the Bankruptcy Act. It does not follow that other equity cases, if inconsistent with the provisions of the Bankruptcy Act, afford a guide in this case.

IV.

Section 77 of the Bankruptcy Act contemplates action by the various classes of "creditors." The transfer of the pledged First and Refunding Bonds, if recognized in the bankruptcy court, would create a new class of "creditors" as defined in Section 77.

Formulation of a plan would be impossible if transfers of the bonds were to be permitted without control and recognized, because it would be impossible to know what classes to provide for and what claims.

By statutory definition the word "creditors" as used in Section 77 has a broader meaning than usually attaches to it (Subdivision b):

> "The term 'creditors' shall, except as otherwise specifically provided in this section, include, for all purposes of this section and of the reorganization plan, its acceptance and confirmation, all holders of claims, interests, or securities of whatever character against the debtor or its property, including claim for future rent, whether or not such claims, interests, or securities would otherwise constitute provable claims under this act."

Thus a "creditor," as the word is used in Section 77, may be one holding merely an "interest" in the estate, such as a fractional interest in the lien of a mortgage on property in the estate, and may not hold a debt; whereas in an ordinary bankruptcy proceeding a "creditor" is always one to whom a debt is owed absolutely at the commencement of the proceeding.

The cardinal feature of Section 77 is that it provides for action by percentages of the various classes of "creditors," as thus defined. Ten per cent of a class may present a plan (Subdivision [d], Appendix to R. F. C. Brief, p. 98). Two-thirds of a class may accept a plan for the class (Sub-

divisions [e], [g], [h], Appendix to R. F. C. Brief, pp. 98-99, 101-103).

For the protection of the "creditors," Subdivision (g), clause 6, provides that the Court must be satisfied that:

> "* * * the plan provides with respect to any class of creditors the acceptance of which is requisite to the confirmation of the plan, and who would not become bound by the plan under the provisions of subdivision (h) of this section, adequate protection for the realization by them of the value of their securities, liens, and claims, either (a) by the sale of such property subject to their liens, if any, or (b) by the sale free of such liens at not less than a fair upset price, and the transfer of such liens to the proceeds of such sale, or (c) by appraisal and payment in cash of either the value of such liens and claims or, at the objecting creditor's election, the value of the securities allotted to such liens and claims under the plan."

Recognizing the necessity of dividing the "creditors" into fixed classes, clause 5 of Subdivision (c) of Section 77 provides that the Court:

> "* * * shall determine a reasonable time within which the claims and interests of creditors and stockholders may be filed or evidenced, and after which no such claim or interest may participate in any plan except on order for cause shown; the manner in which such claims and interests may be filed or evidenced and allowed, and, for the purposes of the plan and its acceptance, the division of creditors and stockholders into classes according to the nature of their respective claims and interests."

It will be clear upon the briefest reflection that it is essential to have the classes of "creditors" remain fixed, or at least substantially fixed, if a plan is to be formulated and go through the successive stages contemplated by Section 77.

A. Each of the pledgees belongs within a single class of "creditors"; its total claim falls within that class; and its collateral does not fall within any other class, or entitle the pledgee to vote in another class.

It is obvious that each of the pledgees has but a single claim and can be in but a single class of "creditors." Whether all of the pledgees fall in the same class is immaterial (See Appendix to R. F. C. Brief, p. 139). No one "creditor" having a single claim can be in more than one class.

The contrary view expressed in the Reconstruction Finance Corporation Brief at pages 91-92 seems to us so plainly mistaken that no extended discussion is required. The plan of reorganization must provide for the whole claim of the Reconstruction Finance Corporation. In making provision for the claim, it is obvious that all the collateral which secures the claim must be considered; the provision will not be "equitable," as required by Section 77, unless it recognizes the value of the collateral and also the value of any deficiency claim against free assets. There is, therefore, no possible reason why the Reconstruction Finance Corporation should have a vote in any other class.

If a creditor's claim can be voted not only in the class in which it belongs but also in any class in which its security would fall if owned outright an impossible situation would exist. For example, there are $61,581,000 General Mortgage Bonds owned outright and $38,400,000 pledged under the First and Refunding Mortgage (R. 33, 59). Should the latter be counted and voted as if owned outright? Can they be voted with $28,254,000 of the outstanding General Mortgage bonds and bind $33,327,000 dissenting outstanding bonds?

The St. Paul and Kansas City short Line Bonds afford an even clearer example. There are $9,981,265 outstanding

bonds in the hands of the public and $17,828,250 pledged to the Reconstruction Finance Corporation and the Banks (R. 20-21, 37-39). If the plan provides that the pledgees shall receive cash in full for their claims but that the Short Line bondholders will get less than what they believe to be fair, can the pledgees buy less than $1,000,000 additional Short Line bonds and vote two-thirds of the class in favor of the plan?

A plan must provide for a creditor's whole claim, including any collateral. To allow a creditor, whose whole claim must be provided for anyhow, to vote in the various classes in which its collateral would fall if owned outright would be incongruous. The creditor could not want a vote in other classes in order to protect its own claim, but only to keep others from protecting theirs.

Furthermore, as already pointed out, the pledged bonds of the type we have been discussing do not represent the same legal rights as are represented by the bonds of the same issue which are owned outright (See pp. 21-23). If provable as "interests" in the estate although not "claims," the pledged bonds would fall in a different class from the bonds owned outright.

B. If the pledgees can transfer the pledged First and Refunding Bonds, the effect will be to create a new class of "creditors" to be provided for in the Plan.

If the pledgees have the right to transfer the pledged First and Refunding Bonds, and transfers thereof must be recognized in the proceeding, the pledgees have the power to create a new class of "creditors" at will.

The classification provided for under Section 77 has been universally understood to require the division of the "creditors" into classes of substantially identical "claims"

or "interests" (See Appendix to R. F. C. Brief, pp. 133-142). If this were not so, and a single class could contain "creditors" having different "claims" or "interests," a two-thirds majority in one class might bind a minority having substantially adverse interests.

The holders of the First and Refunding Bonds which are owned outright are entitled to share in the free assets in the estate of the Principal Debtor as well as to share in the lien of the Mortgage. Neither the pledgees nor any transferees of the pledgees could have any claim against the free assets based on the pledged bonds. The difference is a substantial one. There is evidently going to be a very large deficiency on the First and Refunding Bonds.

It necessarily follows that, if the pledged First and Refunding Bonds be transferred and the transfers be recognized in the bankruptcy proceeding, *the effect will be to create a new class of "creditors," the amount of which will depend on the amounts of the bonds transferred and which will thus be subject to the whim of the pledgees.* For the transferees will acquire bonds, which will represent "interests" in the estate (that is, interests in the property subject to the First and Refunding Mortgage), but which will not represent *debts* and will not entitle the holders to prove deficiency claims against the estate of the Principle Debtor.

It is obvious, for example, that the Chase National Bank now has a single claim for $2,000,000, which belongs in one class, and which will continue to belong in that class no matter how many pledged bonds it might transfer, unless the whole claim be discharged. Transferees of the pledged bonds would fall into an entirely new class, since their rights would be different from those of the holders of the

First and Refunding Bonds now owned outright, who constitute a class of "creditors" (Appendix to R. F. C. Brief, p. 135).

The creation of a new class of "creditors" necessarily results when such "interests" held as collateral to secure a single "claim" are separated from the "claim." A "creditor" is one holding either a "claim" (a debt) or an "interest" (see *ante*, p. 27). The pledged First and Refunding Bonds are "interests" held to secure a single "claim." If, for example, the Chase National Bank were to assign its entire "claim" and security "interests," it would be a different matter. So also, if, with the approval of the Court, it were to split up its claim and were to transfer the fractions of the claim, a proportionate fraction of the security "interests" going to each transferee of a fraction of the "claim," the transferees would fall in the same class which now includes the Chase National Bank. But a separation of security which consists of "interests" in the estate from the "claim" which the "interests" secure necessarily has a different effect.

Counsel for the Petitioner Banks attempt to controvert these propositions (pp. 57-59, footnote 16), but their argument seems clearly unsound. It is perfectly true, as they say, that transfers of entire claims *within a class*, the amount of which is fixed, do not present a serious complication. Thus holders of the $104,470,000 First and Refunding Bonds (R. 4) outstanding in the hands of the public (Appendix to R. F. C. Brief, p. 42) can transfer them freely without causing any complications, at least at this time. They constitute a class of creditors, fixed in amount, and a mere assignment of entire claims within a fixed class presents no problem (Appendix to R. F. C. Brief, p. 135).

But a transfer of any of the pledged bonds would *create a new class of creditors*. There are $56,582,000 of the pledged

First and Refunding Bonds. (Appendix to R. F. C. Brief, p. 42). We are concerned here with $13,530,000 of them (see *ante*, p. 8). How can a plan be formulated if a new class of "creditors" can be created at any time, and the amount of "creditors" of that class increased at any time by the transfer of additional pledged bonds?

C. Section 77 must be construed to authorize the Court to control the transfer of the pledged bonds.

It is obvious that Section 77 must be construed to authorize the Court to *control*, in the exercise of a sound judicial discretion, the transfer of the pledged bonds. As will be noted below, this does not mean that such transfers should be prohibited perpetually or unconditionally. But it does mean that the pledgees cannot possess the power to create new classes of "creditors" at will; for, if they can, no plan can be formulated.

It is equally clear that the Court below could have obtained the same result by an order expressly made under clause 5 of subdivision (c) of Section 77, quoted above at page 28. Such an order need only have provided that the classes of "claims and interests" were fixed, and that no new class of "claims and interests" could be created.

V.

The assignment after bankruptcy of "claims" against or "interests" in a bankrupt estate is not a matter of constitutional right, and such assignments are subject to such control as may be authorized by statute.

It cannot be seriously disputed that Congress, in the exercise of its bankruptcy power, can establish rules governing

the administration of the estates of bankrupts. Nor can there be any doubt that provisions relating to the assignment of "claims" or the transfer of "interests" in a bankrupt estate held to secure a claim against a bankrupt would fall within the scope of the authority of Congress.

In ordinary bankruptcies such assignments and transfers are restricted. Assignments of entire claims must conform to General Order XXI. And as to transfers of pledged bonds held as security, it is clear that, even if such transfers would create new debts provable under Section 63(a) (which we deny), the transfers would have to be made within the six months period prescribed by Section 57(n) in order to enable the transferees to prove claims.

More important, the Petitioners have not been able to cite a single case holding that transferees of pledged mortgage bonds, held by a secured creditor as security for a single claim, can prove claims (as distinguished from sharing in the lien of the mortgage), in an ordinary bankruptcy case. All of the authorities indicate that the reverse is the case (see *ante*, pp. 19-26).

If, *before a bankruptcy*, a pledgee, holding mortgage bonds issued by the pledgor, transfers the bonds, new *debts* are created, and the transferees can prove deficiency claims and share in the free assets in the bankrupt estate as well as in the lien of the mortgage. But if a transfer be made, *after bankruptcy*, the effect is different, and the transfer, if recognized, simply amounts to splitting up and assigning "interests" in the estate held to secure a single claim. Entirely different rules apply.

There is nothing "unreasonable, arbitrary or capricious" about this (cf. *Nebbia* v. *New York*, 291 U. S. 502, 505). It is an accepted principle that two claims cannot be proved on a single debt. At the same time it is true that a borrower

can pledge a second promise to secure a debt, and that a pledgee thus has the power to create an additional debt by a transfer after default but *before bankruptcy*. The bankruptcy is thus the dividing line. This, of course, is not the only respect in which the commencement of a bankruptcy proceeding is a dividing line; nor is the commencement of the proceeding the only dividing line established by the Bankruptcy Act in fixing the rights of creditors (Sec. 60).

As Mr. Hatch says in his article, referred to above at page 24 (p. 1115):

> "If insolvency of the pledgor corporation is to terminate the pledgee's rights under the power of sale, the actual institution of bankruptcy or other insolvency proceedings represents the most practical dividing line between the time when a power of sale may properly be available and the time after which its exercise is no longer permissible."

But, whatever the law may be in an ordinary bankruptcy proceeding, Section 77 has certain features not to be found in an ordinary bankruptcy. Those include (a) the classification of creditors, (b) the action of the creditors by classes as fixed and (c) the determination by the Court *in its discretion* of the time when "claims and interests" must be proved. Railroad reorganizations such as are contemplated by Section 77 are necessarily complicated. This is particularly true where, as here, there are several estates in one proceeding, and the plan of reorganization will presumably affect all. Section 77 necessarily contemplates a relatively fixed framework on the basis of which a plan can be constructed.

No one has challenged the constitutionality of Section 77 in so far as it provides for action by classes of creditors. Despite all that has been written about the purposes of Section 77—the abuses of equity receiverships, the need to help

the railroads, etc.—it seems to us that the cardinal feature of Section 77 is that it provides that two-thirds of one class of creditors can bind the entire class. This feature presupposes that creditors shall not change the framework on which a plan must be constructed, except subject to the control of the Court.

VI.

Even if we are wrong in assuming that transferees of the pledged First and Refunding Bonds could not prove claims for the face amount thereof (as distinguished from sharing in the lien of the First and Refunding Mortgage), the Court was clearly authorized to restrain any transfers thereof.

Our position, as already stated, is that, to take a specific example, the Chase National Bank had a claim for only $2,000,000 when the proceeding was commenced, and, since the pledged First and Refunding Bonds totalling $3,253,000 did not represent a *debt,* the Chase National Bank could not create an additional debt after bankruptcy by transferring them; that a transfer, if recognized, would create a new class of "creditors" as defined by Section 77, since the holders of the transferred pledged bonds would have different rights from those of the holders of the bonds which were owned outright when the bankruptcy was commenced; and that any attempts to transfer the bonds should therefore be controlled by the Court.

Let us assume, however, that we are mistaken as to the *effect* of transfers of the pledged bonds if transfers were permitted and that the transferees could prove for the face amount of the bonds and be entitled to share accordingly in the free assets in the Principal Debtor's Estate. If so,

it is clear that a transfer, if recognized, would *increase the amount of a class of creditors,* and thus seriously complicate the consummation of a plan which is supposed to be executed through the action of a definite percentage of a fixed class.

There are $104,470,000 First and Refunding Bonds outstanding in the hands of the public and $56,582,000 pledged (Appendix to R. F. C. Brief, p. 42). Let us assume that a plan is presented and approved by the Interstate Commerce Commission as provided in subdivision (d) of Section 77 (*id.*, pp. 97-98). The creditors are then asked to accept it. Of the $104,470,000 First and Refunding Bonds, $70,000,000, let us say, accept it—a clear two-thirds. The plan provides that the pledgees shall be paid in full in cash, but they do not choose to await its consummation. During the period while the acceptances are being obtained the pledgees start to sell the pledged bonds—a thousand one day, a million the next. No one knows how many have been sold—how many are still in pledge. No one knows how many bonds are in the class at any time, how many will be in the class at any future time, or what two-thirds of the class is or will be. How could a plan be consummated with such a situation?

Experience in equity receiverships affords no criterion. The pledging by a railroad corporation of its own mortgage bonds, while not novel, has never reached such proportions or presented such a variety of complications.

VII.

The order under review was not arbitrary. If it appears to be arbitrary, it is only because the petitioners made no suggestions as to any limitations of time or other conditions. Reasonable time limitations and conditions can no doubt be obtained on proper application to the District Court.

From reading of the Petitioners' Briefs it might be supposed that they pleaded with the District Court for the insertion of limitations of time or other conditions in the order under review, and that the Court arbitrarily refused to consider their plea and perpetually enjoined any transfers of pledged bonds on any terms whatsoever.

The fact of the matter is, however, that in the District Court the pledgees stood on what they conceived to be their constitutional or statutory right to transfer the pledged bonds at such time or times and on such terms as they might choose without regard to the effect of any transfers on the proceeding and any plan. And they made no suggestions whatever that any limitations of time or other conditions be inserted in the order, as an examination of the papers in the record filed by them will show (R. 68-75).

They apparently now expect to benefit by their own failure to suggest any limitations of time or other condition, for they point to the absence thereof as evidence of an arbitrary act on the part of the District Court and write eloquently of the delay in presenting and consummating a plan of reorganization.

This discussion of delay, which is to be found particularly in the Reconstruction Finance Corporation Brief, at pages 100-102, is supplemented by a reference to a meeting held on October 11, 1934, at which it appeared that no plan of re-

organization had been formulated, and that there was at that time no immediate prospect of any plan (R. F. C. Brief, pp. 101-102; Appendix to R. F. C. Brief, pp. 167-173). While it may hardly be relevant, it is only fair to point out that the reasons why no plan has been formulated are fully set forth in a letter from the Debtor's Trustees to the Director of the Bureau of Finance of the Interstate Commerce Commission, dated December 13, 1934, which is printed in the Appendix to the Reconstruction Finance Corporation Brief at pages 167-173; that at a meeting of the interested parties held on October 11, 1934, no one present suggested "that it was possible or feasible, or the duty of the Trustees, to present a reorganization plan at this time" (Appendix to R. F. C. Brief, p. 172); that among those present were two representatives of the Reconstruction Finance Corporation (*id.*, p. 170); and that the references in the Reconstruction Finance Corporation Brief to "protracted delay" (p. 102, footnote 40) cannot have been intended as a criticism, because if any criticism were to be made it would apply to the Reconstruction Finance Corporation to the same extent as to any other party in interest.

Reverting to the terms of the order under review, we do not suggest that the Court below may or should prohibit indefinitely any transfers of the pledged mortgage bonds on any conditions whatever. All we contend is that the Court should be permitted to *control* any transfers. The action of the Court will presumably be based on a sound judicial discretion both as to *time* and as to *terms*.

As to *time* the pledgees already have a remedy under clause 7 of subdivision (c) of Section 77, which provides that the Judge

> "if a plan of reorganization is not proposed or accepted, or, if proposed and accepted, is not confirmed,

> within such reasonable time as the judge may, upon cause shown and after considering any recommendation which has been filed by the commission, allow, may dismiss the proceeding."

In addition the Court may, without dismissing the proceeding, permit a transfer if it is satisfied that it is reasonable to do so. The Circuit Court of Appeals expressed the view that special speed may be required under Section 77 (R. 325). We do not quite see why the statute itself does not provide the criterion when it provides for a "reasonable" time, which we assume would be determined fairly. The pledgees have no reason to fear a perpetual "freezing" of their position.

In the matter of *terms*, it is clear, for example, that if the Chase National Bank should wish to transfer its First and Refunding Bonds, and the terms of the transfer did not break down the framework on which the plan must be formulated, the transfer should be permitted. The framework on which a plan must be formulated could be preserved, for example, by requiring the transferee to look only to the Chase National Bank for any recovery in the proceeding; there would be no changes in the classes of creditors, and no one but the Chase Bank and the transferee would be really affected.

The sum and substance of the present situation is that, if the District Court had the *power* to control attempted transfers of the pledged bonds, no question is now presented to this Court as to what limitations of time or other terms would be proper. The pledgees are merely restrained from making the transfer "until further order of this Court" (R. 104). If the pledgees had asked for the insertion of a reasonable limitation of time or other reasonable conditions and none had been inserted, the situation would be different.

VIII.

Everything heretofore said with respect to The Chicago, Rock Island & Pacific Railway Company First and Refunding Mortgage Bonds applies equally to the St. Paul & Kansas City Short Line Railroad Co. First Mortgage Bonds and the Rock Island, Arkansas & Louisiana Railroad Co. First Mortgage Bonds.

The second class of collateral referred to at pages 8-9 above consists of the St. Paul & Kansas City Short Line Railroad Co. First Mortgage Bonds and the Rock Island, Arkansas & Louisiana Railroad Co. First Mortgage Bonds.

The principles discussed above which apply to The Chicago, Rock Island & Pacific Railway Co. First and Refunding Mortgage Bonds all apply equally to the pledged bonds of these two issues, although their legal status is not exactly the same.

Each of the two corporations is a wholly owned subsidiary of the Principal Debtor (R. 23); all of the properties of each are operated by the Principal Debtor under leases of 99 and 999 years respectively (R. 23); the bonds of the two subsidiaries are guaranteed by the Principal Debtor (R. 4, 29, 20-21, 31); and the two Subsidiary Debtors are Debtors in this same proceeding (R. 23-28).

We entirely agree with the Petitioners that, while the Principal Debtor and the Subsidiary Debtors are all debtors in the same proceeding, and a single plan may be proposed and confirmed as to all of them, they have separate estates. We further agree that the Trustees, as Trustees of one estate, may have claims against another estate. But the fact that the St. Paul & Kansas City Short Line Railroad Co. First Mortgage Bonds and the Rock Island, Arkansas & Louisiana Railroad Co. First Mortgage Bonds are guaranteed by the Principal Debtor has the effect of making every principle dis-

cussed above with regard to the First and Refunding Mortgage bonds apply to them.

We take it that there is no doubt that the holders of bonds of these two issues, *if owned outright*, have provable claims against the estate of the Principal Debtor and are entitled to share in the free assets of the estate of the Principal Debtor, their ratable shares therein to be determined by the amount of their deficiency claims.

Maynard v. *Elliott*, 283 U. S. 273.

The outstanding bonds, *if owned outright*, thus have three attributes. They are: (1) ratable shares in the lien of the relevant mortgage; (2) debts, which form the basis of provable claims against the Subsidiary Debtor issuing the same; and (3) contingent obligations of the Principal Debtor, which form the basis of provable claims against the Principal Debtor.

It seems equally clear, however, that, unless bonds of these issues are owned outright, they do not possess the third of these three attributes.

It may be true, as stated in the Brief of the Reconstruction Finance Corporation at page 93, that, even prior to the pledge of the bonds, the Principal Debtor as the owner thereof was entitled to share in the lien of the mortgage and to enforce the debt of the Subsidiary Debtor evidenced by the bonds. If so, the bonds thus had two of the three attributes of the outstanding bonds which were owned outright. But obviously they did not at that time have the third attribute, because, being held by the Principal Debtor itself, they did not constitute obligations of the Principal Debtor. A corporation cannot be under any contractual obligation to itself.

Our position is that after the pledges the bonds continued to have the same legal attributes, so far as this bankruptcy

proceeding is concerned, as they had before the pledges, for the reason that they were pledged to secure a debt of the Principal Debtor. And the Principal Debtor's guarantee was a nullity, so far as the pledgees were concerned, unless the pledgees sold the bonds prior to the bankruptcy, because the pledgees could not prove claims on the guarantee in the bankruptcy proceeding—their claims being only for the amounts which the Principal Debtor owed them respectively.

Viewing the legal status of the pledged bonds as they affect the estate of the Principal Debtor, their status is not substantially distinguishable from that of the Principal Debtor's First and Refunding Bonds. The fact that the bonds of the Subsidiary Debtors did constitute, from the time of their issue, oligations of the Subsidiary Debtors, does not afford a basis for changing the principles applicable to them in this proceeding.

In the Reconstruction Finance Corporation Brief it is asserted that transfers of these subsidiary bonds after the commencement of the bankruptcy proceeding would not, if recognized, result in an "increase of a debt structure" (p. 94), since they already represent obligations of the Subsidiary Debtors. But such transfers, if acknowledged to give the pledged bonds the status now held by the outstanding bonds which are owned outright, would increase the liabilities of the Principal Debtor on the basis of which its free assets are to be distributed, and would increase the amounts of claims in established classes of creditors which must remain fixed if a plan is to be formulated. And, if such transfers did not give the pledged bonds the status of the outstanding bonds, a new class of "creditors" would be created.

In the Brief submitted on behalf of the Banks it is argued that transfers of these pledged bonds of the Subsidiary Debtors would have no substantial effect even if the result

were to create new liabilities of the estate of the Principal Debtor, since the Principal Debtor could require a Subsidiary Debtor "to reimburse it for any payments it might be compelled to make upon its guarantee" (p. 57, footnote 14). But this contention is clearly fallacious. Any claim which the Principal Debtor might have against a Subsidiary Debtor for reimbursement on account of a loss sustained through the performance of a guarantee would not be a preferred claim, and the Principal Debtor could at the most recoup only such dividend, if any, as might be distributable out of the free assets of the Subsidiary Debtor in question.

It remains only to clear up any possible doubt as to the fact that these two issues of bonds of Subsidiary Debtors are guaranteed by the Principal Debtor. The record is perfectly explicit on the point (R. 4, 29, 20-21, 31). But in the Reconstruction Finance Corporation Brief (p. 93 footnote 37) the curious suggestion is made that the statements in the record as to the guarantee are "contradicted by other statements that the debtor agreed to pay the *interest* as *rental* (R. 29) in which case the transaction, being a lease, would be voidable by the Trustees." (Italics in original.) There is no contradiction at all. The record shows that the bonds are guaranteed as to principal and interest. It also shows that under the terms of the Rock Island, Arkansas & Louisiana Railroad Co. lease the interest on the bonds constitutes either all or part of the rental payable. This is no contradiction or inconsistency. The guarantees of the bonds outstanding in the hands of the public constitute obligations of the Principal Debtor to the holders of the bonds which obviously cannot be affected by a disaffirmance of the lease. The agreement of the Principal Debtor in the lease to pay the interest on the bonds as all or part of the rental is a separate obligation of the Principal Debtor to the Subsidiary Debtor.

IX.

The order under review was authorized as to bonds of the Subsidiary Debtors even if not guaranteed by the Principal Debtor.

As to the third class of collateral referred to at pages 9-10 above, which is held by the Reconstruction Finance Corporation (all of the collateral held by the Banks falling in the first two classes), the question presented is somewhat different. This third class includes bonds issued by wholly owned Subsidiary Debtors but which are not guaranteed by the Principal Debtor.

We submit, that the District Court clearly had the power to control transfers of these bonds of Subsidiary Debtors also.

The reason why it had such power under Section 77 is because transfers of these bonds would have the effect of creating new classes of creditors which would have to be provided for under the plan of reorganization. While it is true that the purchasers of the bonds would not be creditors of the Principal Debtor, the purchasers would fall into new classes of creditors which would have to be provided for in a plan and which will not exist so long as the pledged bonds are held by the pledgees.

It is quite evident that Section 77 contemplates a single plan of reorganization, to affect at one and the same time the properties of such a railroad corporation as The Chicago, Rock Island & Pacific Railway Company and the subsidiary corporations which become debtors in the same proceeding (Appendix to R. F. C. Brief, p. 91). It seems equally clear that when bonds of a subsidiary debtor are held in the treasury of a principal debtor, or are held by pledgees to whom the principal debtor has pledged them, it is unnecessary to treat the holders thereof as constituting a class of creditors.

If the bonds are held in the treasury of the principal debtor, a plan of reorganization will have to recognize their status as a free asset of the principal debtor or it will not be equitable (Section 77, subdivisions [d], [f] and [g]; Appendix to R. F. C. Brief, pp. 98, 100-102). Similarly, if pledged bonds of a subsidiary debtor are in the hands of a secured creditor of the principal debtor, their status and value must be taken into consideration in the plan, both in determining what provision is to be made for the claim of the secured creditor and in allowing for the equity over its claim if there be any equity. But so long as an entire issue of bonds of a subsidiary debtor is held in the treasury of the principal debtor or by a pledgee of the principal debtor, the holder of such bonds is not properly to be considered as constituting a class of creditors to be provided for under a plan. If, however, such bonds are owned outright, their holders will clearly constitute a class of creditors who will have to be provided for and may vote as such a class with regard to a plan.

Therefore, if secured creditors of the Principal Debtor have the power to sell at will the pledged bonds of a Subsidiary Debtor, they will be able to complicate the presentation and confirmation of a plan seriously. For example, the third class of pledged bonds referred to above at pages 9-10 consists of six different issues, all of which are held by the Reconstruction Finance Corporation. In the order classifying the creditors the Reconstruction Finance Corporation's entire claim is included in a class (Appendix to Brief of R. F. C., p. 139, class 22). But there are no classes representing the issues of The Chicago, Rock Island & Gulf Railway Co., Rock Island & Dardanelle Railway Co., Rock Island Memphis Terminal Railway Co., and Rock Island Omaha Terminal Railway Co. If the Reconstruction Finance

Corporation were to sell all of these bonds there would be six new classes of creditors, the amount of whose claims would be as set forth above at pages 9-10. The Reconstruction Finance Corporation might decide to sell only part and not all—perhaps part of all of the issues, or all of some and part of others and none of still others. We do not see how there can be any doubt that, if the Court cannot control such transfers, the pledgee would have the capacity seriously to complicate the presentation and confirmation of a plan.

Viewing the question as involving the *power* of the District Court, it seems to us that there can be no question that it did have the power to control any attempted transfers of "collateral" of this kind. As to the *terms* on which such a power should be exercised in the event of an application by the Reconstruction Finance Corporation for leave to transfer bonds of this class, it may be that there are factors involved in attempted transfers of the bonds of the first two classes which do not apply to this class, and that the District Court might properly take into consideration the absence of such factors in determining whether to permit sales of bonds of this class on an application for leave to sell them.

X.

No point was made below by Reconstruction Finance Corporation with regard to the fourth class of collateral.

The facts with regard to this class of collateral, which is not relatively important, are given above at pages 10-11. As to the Rock Island Improvement Company bonds, which apparently constitute the most valuable part of the class, they differ from the third class only in that the Rock Island

Improvement Company has not yet become a Subsidiary Debtor in the proceeding.

The Reconstruction Finance Corporation made common cause below with the Banks, who have only collateral of the first two classes, and do not stress in this Court any possible respects in which this class of collateral may differ from the others.

XI.

None of the cases cited by the Petitioners establishes anything contrary to the conclusions expressed above.

The Reconstruction Finance Corporation and the Banks cite various cases which they apparently conceive to establish principles contrary to the conclusions expressed above, but we do not so read the cases they cite (Reconstruction Finance Corporation Brief, at pp. 33-34, 38-44; Bank's Brief, pp. 17-21).

It is significant that the Petitioners nowhere expressly contend that if a creditor in a bankruptcy holds a mortgage bond issued by the bankrupt as security for its debt, and purports to transfer the mortgage bond after the commencement of the bankruptcy proceeding, the transferee may prove a deficiency claim based on the face amount of the mortgage bond so transferred. Not a single case is referred to as establishing that such would be the effect of a transfer after the commencement of the bankruptcy proceeding. Yet it seems rather futile to determine whether such "collateral" may be sold unless it is determined what the effect of a sale will be.

Furthermore, with one possible exception, not a single case cited by the Petitioners indicates that the Bankruptcy

Court may not control attempted transfers of pledged mortgage bonds of a bankrupt, and in that case it is impossible to determine just what the Court did hold.

The principal case relied upon is *Jerome* v. *McCarter*, 94 U. S. 734. In reading the references to it in the two Briefs one might suppose that it was a bankruptcy case. It was not. It was an equity case. It came to this Court on an appeal from a decree in a foreclosure action. The only question presented was as to the right of certain transferees of mortgage bonds to share in the proceeds of the sale on foreclosure. Those transferees had acquired the bonds by purchase from other creditors of the company during the pendency of a bankruptcy proceeding, *an entirely separate proceeding.* No question was presented, as here, with regard to the power of a bankruptcy court to bar or control an attempt by a secured creditor to make a partial assignment of its security when such security consists of a fractional interest in property in the bankrupt estate. Presumably the Court in the bankruptcy proceeding referred to in the opinion in *Jerome* v. *McCarter* had not been asked to control any transfer of the bonds. As a matter of fact almost nothing appears in the opinion about the bankruptcy proceeding. Certainly the question now before this Court was not even remotely considered.

A simple analogy will show what was decided in *Jerome* v. *McCarter*. Let us assume that, after the commencement of this bankruptcy proceeding but before the order under review was entered, the Chase National Bank had transferred the pledged First and Refunding Bonds to the First National Bank of the City of New York. Let us further assume that it proved to be impossible to have a reorganization plan in this proceeding and that it was therefore dismissed, but that an equity foreclosure action was there-

after commenced by the Trustees of the First and Refunding Mortgage. Let us assume further, that at the time of the sale in the equity foreclosure the First National Bank asserted the right to share ratably in the proceeds of the foreclosure sale, and that there were no other assets of the Railway Company except those subject to the First and Refunding Mortgage. If such a situation had arisen, and if the contention had been made at that juncture by holders of the outstanding First and Refunding Bonds that the First National Bank was not entitled to share in the proceeds of the foreclosure sale, *Jerome* v. *McCarter* would be controlling. For it held that the mere fact of the pendency of a bankruptcy proceeding did not prevent a transfer of pledged mortgage bonds from being effective *to the extent of entitling the transferee to share in the proceeds of a subsequent equity foreclosure.*

Guaranty Trust Co. of New York v. *Galveston City R. Co.*, 87 Fed. 813, was also not a bankruptcy case, but an *equity* case. The Guaranty Trust Co., as Trustee of an issue of bonds of the Galveston City Railroad Co., commenced a foreclosure action. It so happened that in its capacity as a bank it had made a loan to the Galveston City Railroad Co., secured by bonds of another issue of which the United States Mortgage & Trust Co. was trustee. The Galveston City Railroad Co. sought to restrain the Guaranty Trust Co., acting in its individual capacity, from selling the second mortgage bonds held by it as collateral. As it was a *receivership* case, the Court said that it was not concerned with the loan at all. Its ruling was as follows (p. 815, italics ours):

> "The foreclosure was commenced and prosecuted by the bondholders through their representative. That controversy is wholly between the bondholders and the railroad company, and *the controversy be-*

> *tween the railroad company and the appellant respecting this $50,000 loan is altogether foreign to the foreclosure proceedings.* The bondholders are in no wise concerned in it, and their foreclosure proceedings cannot properly be modified or incumbered thereby."

In re Ironclad Mfg. Co., 192 Fed. 318, is the one case which seems to be somewhat in point on the facts, but it nowhere determines the effect of a transfer, after the commencement of bankruptcy proceedings, of mortgage bonds held by a creditor as security. The report shows merely that an application was made for an injunction, which was denied with an opinion of one sentence written by District Judge VEEDER and reading as follows:

> "After careful consideration I have reached the conclusion that the motion must be denied on the authority of Jerome v. McCarter, 94 U. S. 734, 24 L. Ed. 136."

Judge VEEDER's decision was affirmed by the Circuit Court of Appeals on his opinion. The Court did not say what the *effect* of a sale of the collateral would be. It did not even say *why* it allowed the sale. For all that appears the property secured by the mortgage bonds was not in the possession of the Bankruptcy Court at all; the Bankruptcy Court may have permitted a foreclosure in the State Court after the commencement of the bankruptcy proceeding, or a foreclosure may have been commenced prior to the bankruptcy, which the Court had no power to enjoin. Cf. *Straton* v. *New*, 283 U. S. 318. If such was the case, there was no reason why the bonds held as collateral should not be sold and the purchasers allowed to prove their respective interests in the proceeds of the foreclosure sale; the Bankruptcy Court was not concerned with that. The Court did *not* hold that a purchaser of the bonds would obtain a claim provable in

bankruptcy or any other rights enforceable in the bankruptcy proceeding. Apparently the question was not considered.

In *Turner* v. *Metropolitan Trust Co.*, 207 Fed. 495, the fact is that the *sale of the pledged bonds preceded the bankruptcy.* The sale took place on August 30, 1911. The corporation was adjudged bankrupt on October 26, 1911.

The Brief of Reconstruction Finance Corporation argues, somewhat disingenuously we think, that "No point was made in the case that the pledged bonds were sold prior to the filing of the petition in bankruptcy" (p. 42). The argument seems to us somewhat disingenuous because our theory as to the rights of the pledgees depends partly upon what we conceive to be the effect of the commencement of the bankruptcy proceeding and the difference between a sale before and an attempted transfer after the commencement of such a proceeding. The petitioners, citing *John Matthews, Inc.* v. *Knickerbocker Trust Co.*, 192 Fed. 557, acknowledge that there is a difference between a sale before and an attempted transfer after bankruptcy in the case of unsecured bonds (R. F. C. Brief, pp. 34, 44-46; Bankers' Brief, p. 18). We contend that it makes the same difference in the case of pledged mortgage bonds of a bankrupt whether the sale takes place before or an attempt is made to sell after the bankruptcy.

All that the *Turner* case decided was that a pledgee of mortgage bonds issued by the pledgor could buy in at a sale taking place before the bankruptcy and could prove for the face of the bonds so bought in. And if a borrower can pledge a bond to secure a debt of a smaller amount and enable the pledgee to create a new debt by transferring the pledged bond before the bankruptcy, there seems no reason why the pledgee itself should not be able to become the owner

of the new debt; a contrary rule would simply exclude one of the bidders when a pledged bond was offered for sale.

The case of *Rogers Brown & Co.* v. *Tindel Morris Co.*, 271 Fed. 475, was an equity case and is therefore not in point.

The only cases cited by the banks on the question really involved here are *Jerome* v. *McCarter, In re Ironclad Mfg. Co.*, and *Turner* v. *Metropolitan Trust Co.*, all of which have been discussed above (Banks' Brief, p. 19).

XII.

The Petitioners were not entitled to interest on their claims after the bankruptcy proceeding commenced.

The question of the propriety of paying interest on the Petitioners' claims is not directly involved in this Court, but it is important to the General Mortgage Bondholders that the record with regard thereto be clear.

We take it that there is no doubt that after the bankruptcy proceeding commenced the Petitioners had no right to any payment of interest out of the estate of the Principal Debtor, as distinguished from their right to income from the pledged collateral. Such income they have received (R. 341-342).

Nevertheless, on June 26, 1933 an order was made directing the payment of interest to the Reconstruction Finance Corporation (R. 11-18). On August 1, 1933, a second order was entered under which interest was paid both to the Reconstruction Finance Corporation and the Banks (R. 19-22). The first of these orders was made before the formation of the General Mortgage Committee and the second was

entered without notice to it (R. 34). On August 28, 1933 a third order was entered, of which the Reconstruction Finance Corporation was the beneficiary (R. 28-36). This order was entered over the objection of the General Mortgage Committee (R. 32-35).

When the Principal Debtor filed its petition of September 28, 1933, on which the order under review was entered, the General Mortgage Committee again objected to any interest payments (R. 59-63). One of the grounds for its objection was that the payment of the interest would require a diversion of the earnings of the General Mortgage and of the other mortgages (R. 61). The Court, in order to obtain time to decide whether to grant the injunction prayed for, directed the payment of interest to the Reconstruction Finance Corporation on the undertaking of the Petitioners that they would not "convert, sell or dispose of the collateral pledged under their various notes, respectively, except upon five (5) days' notice to the Debtor Corporation, *if the interest due September 30, 1933 on the said Reconstruction Finance Corporation loan should be paid*" (R. 77, italics ours).

The record does not admit of any doubt that the various payments of interest were made in order to induce the Petitioners not to transfer their collateral (see also R. 14, 20, 29). Following the entry of the order under review no further interest payments were made out of the estate, but the Petitioners received the income from the pledged collateral (R. 341-342).

The Petitioners contend that the Circuit Court of Appeals misunderstood the facts, when it said in its opinion (R. 325):

> "Appellants have received and will probably continue to receive the prompt payment of interest upon their claims secured by the debtor's and its subsidiaries' bonds."

Whether there was any misunderstanding or not, we cannot believe that the opinion was intended to convey the impression that the Petitioners were entitled to interest, even if not earned on the collateral, for clearly they were not as a matter of law.

The interest on the General Mortgage is not now being paid (Cf. Appendix to R. F. C. Brief, p. 165), and it is obvious that further payments of interest to the Petitioners would require diversion of the earnings of the General Mortgage as well as a depletion of cash urgently needed for other purposes (*id.*, pp. 161-166).

We state the facts with regard to the pledgees' demands for interest principally in order that an accurate record will be readily available to the Court. The matter of the interest, it seems to us, has no direct bearing on the power of the District Court to enter the order under review, and, except to the extent indicated above at pages 38-40, no bearing on the propriety of the exercise of that power.

CONCLUSION.

The order below should be affirmed.

Respectfully submitted,

JAMES H. MCINTOSH,
CLIFTON P. WILLIAMSON,
EDWARD W. BOURNE,
Attorneys for Respondent,
Protective Committee for The Chicago, Rock Island & Pacific Railway Company General Mortgage Bonds.

February 5, 1935.

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In the Supreme Court of the United States

OCTOBER TERM, 1934

Nos. ——

RECONSTRUCTION FINANCE CORPORATION, PETITIONER

v.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY et al.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

PETITION

Reconstruction Finance Corporation (hereinafter sometimes called the petitioner), a corporation organized and existing under an Act of Congress approved January 22, 1932 (c. 8, 47 Stat. 5), all of the stock of which is owned by the United States, prays that writs of certiorari issue to review the judgments of the Circuit Court of Appeals for the Seventh Circuit entered in the above causes on July 23, 1934 (R. 332, 338), affirming the injunctional order of the United States District Court for the Northern District of Illinois, entered on November 22, 1933 (R. 101).

OPINIONS BELOW

The injunctional order of said District Court was issued without opinion. The opinion of the Circuit Court of Appeals for the Seventh Circuit (R. 313) is not yet reported.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered on July 23, 1934 (R. 326). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 938).

QUESTION PRESENTED

Where a debtor railroad and its properties are being administered in reorganization proceedings brought under Section 77 of the National Bankruptcy Act, as amended, c. 204, 47 Stat. 1474, may the bankruptcy court lawfully enjoin holders of secured notes of the debtor railroad from selling pursuant to the terms of such notes the collateral security held by them?

STATUTES INVOLVED

The relevant portions of the National Bankruptcy Act, as amended, are set out in the Appendix, *infra*, pp. 22–41.

STATEMENT

The Chicago, Rock Island and Pacific Railway Company (hereinafter called the debtor), an Illinois and Iowa corporation, on June 7, 1933, filed

a petition (R. 2) in the United States District Court for the Northern District of Illinois to effect a plan of reorganization under Section 77 of the Bankruptcy Act, as amended.

At the time of the filing of said petition of the debtor the debtor was indebted to the petitioner, Reconstruction Finance Corporation, in the principal amount of $13,718,700, evidenced by notes of the debtor for that amount maturing March 1, 1934. As collateral security therefor there was pledged with the petitioner $7,575,000 face amount of bonds of the debtor, $27,599,973.34 face amount (exclusive of $4,380,000 face amount pledged under the prior lien of a mortgage and held by the trustee or trustees of such mortgage) of bonds of companies other than the debtor, $747,492.51 face amount of receivers' certificates of a company other than the debtor, and an assignment of the debtor's distributive share (estimated by the debtor at $1,400,000) in certain assets of The Railroad Credit Corporation (R. 37).

The notes evidencing this indebtedness provided, in case the debtor defaulted in paying either principal or interest on said notes, or failed on notice to furnish additional collateral, or became insolvent or went into receivership, that the Reconstruction Finance Corporation was authorized to sell said collateral through a broker or at public or private sale, either for cash or upon credit, and without any demand, advertisement, or notice. The Recon-

struction Finance Corporation was further authorized to purchase said collateral for itself. (For provisions of the notes see R. 46.)

Debtor is also indebted to five banks on notes in the aggregate amount of $4,125,000, in substantially the same form, likewise secured by collateral (R. 39).

On September 26, 1933, the debtor filed a petition (R. 37) asking the District Court for instructions as to payment of interest due to petitioner and the banks on October 1, 1933, and for a determination that in the event of default in payment of such interest an order should be issued enjoining petitioner and the banks aforesaid from selling the collateral security for the above-mentioned notes.

One of the protective committees (for the debtor's General Mortgage 4% Bonds), named as respondents herein, filed an answer to the petition of the debtor (R. 59) asking that said District Court enjoin the sale of the collateral. The other protective committees filed either affidavits (R. 65) or briefs in support of the petition.

On November 22, 1933, the District Court, without opinion, issued the requested injunctional order, restraining the petitioner and the five banks from "* * * converting, selling, or otherwise disposing of the collateral held by them as security for the promissory notes of the debtor, or any part

thereof, until further order of this court." The order was, by its terms, predicated on the assumption that the sale of the collateral in question would "* * * hinder, impede, obstruct, delay, and in effect prevent the orderly preparation and consummation of a plan of reorganization * * *" of the debtor, and that the injunction was "* * * necessary for the enforcement of the provisions of Section 77 * * *" (R. 101).

The District Court had previously, while holding the injunction question under advisement, ordered one installment of interest falling due October 1, 1933, to be paid; but the only moneys received since such date by the petitioner properly applicable to interest on its claims are two minor payments, representing interest in part on one of the bond issues included in the pledged securities held by the petitioner (R. 341). Neither has the injunction order been vacated or in any way modified by the District Court.

An appeal from said order was taken by the petitioner from the District Court (R. 163) and a petition (R. 273) to revise said order was allowed by the Circuit Court of Appeals for the Seventh Circuit (R. 278). These causes were subsequently consolidated for hearing by order of the Circuit Court of Appeals (R. 298). Meantime, on November 22, 1933, Joseph B. Fleming, Frank O. Lowden, and James E. Gorman were appointed trustees for

the Debtor by the District Court (R. 105), and on their petition they were made additional appellees in each case pending in the Circuit Court of Appeals by order of that court (R. 310).

A hearing was had in the Circuit Court of Appeals on May 28, 1934; and on July 23, 1934, that court rendered an opinion affirming the order of the District Court (R. 313). On the same day judgments affirming were entered in each of the two appeals pending in the Circuit Court of Appeals (R. 332, 338).

SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred in holding—

(a) That the District Court had jurisdiction over petitioner in the premises;

(b) That, even if it had such jurisdiction, it had power to enjoin the petitioner from enforcing against the pledged collateral the terms of the notes;

(c) That this petitioner should be enjoined from selling the collateral held by it as security for the notes of the debtor;

(d) That this petitioner should be enjoined from selling the collateral held by it consisting of the secured obligations of companies other than the debtor;

(e) That the sale of such collateral would defeat the purposes of Section 77 of the Bankruptcy Act, as amended;

(f) That the District Court was justified in issuing the injunction on the record in this case; and

(g) That the order of the District Court should be affirmed.

REASONS FOR GRANTING THE WRITS

1. The decision of the court below involves an important question of Federal law which has not been, but should be, settled by this Court.

2. The decision is in conflict with the overwhelming weight of authority prior to the enactment of said Section 77 and, likewise, with the applicable decisions of the Supreme Court.

3. In affirming the injunctional order of the District Court, issued upon a record that does not support the order, and in disregard of the express language of the statute, the Circuit Court of Appeals has so far sanctioned a departure by the lower court from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

4. The question involved is one of great public importance, since the effect of the decision is to deny to holders of collateral notes similarly situated the right to enforce against collateral the terms of their notes against railroads which are subject to said Section 77. The petitioner holds notes of railroads of a face value in excess of $325,000,000, containing terms substantially identical with those contained in the notes involved in this case.

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Wherefore, it is respectfully submitted that this petition should be granted.

J. CRAWFORD BIGGS,
Solicitor General.

STANLEY REED,
General Counsel, Reconstruction Finance Corporation, Counsel for Petitioner.

OCTOBER 1934.

BRIEF IN SUPPORT OF PETITION

For brevity, this brief is limited to argument, since the formal statements required by the rules of the Supreme Court have been set forth in the petition.

ARGUMENT

I

THE DECISION INVOLVES AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT

The primary question involved in this case is whether under Section 77 of the Bankruptcy Act, as amended, the District Court was authorized to issue an injunction against the sale of collateral pursuant to the terms of notes held by secured creditors.

This question is one of first impression under Section 77.

The injunctional order of the District Court (R. 101) is not limited to the stay of judicial proceedings. It is worded broadly so as to restrain the sale of the petitioner's collateral in any manner, whether in a judicial proceeding or otherwise.

No express authority for the issuance of such an order is to be found anywhere in Section 77 of the Bankruptcy Act, as amended.

Subdivision (l) of said Section 77 is as follows:

> (l) In addition to the provisions of section 11 of this Act for the staying of pending

> suits against the debtor, such suits shall be further stayed until after final decree [and] the judge may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree.[1]

This is the only clause in Section 77 relating to injunctions. It fails to authorize the court to enjoin a secured creditor from selling his collateral pursuant to the terms of his note.

The Circuit Court of Appeals has affirmed the order of the District Court on the theory that the power to issue the injunctional order was conferred, not expressly, but as an *incident* to other powers expressly conferred by Section 77. See the opinion of the court below (R. 324):

> Our conclusion is that the restraining order is an exercise of authority on the part of the court which was necessary to the effective use of the powers expressly conferred by Congress through this amendment. In short, it was the exercise of a power which was incident to those expressly conveyed by Congress to the court.

Perhaps this conclusion was reached in view of another statement of the court with which petitioner agrees (R. 323):

> Surely we are justified in giving to the amendment a liberal construction, one that

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[1] The word in brackets was apparently omitted from the statute by inadvertence, since otherwise the sentence construction is defective.

is consonant with the purposes of this remedial legislation.

However, it is difficult to believe that Congress would not have *expressly* conferred upon the court the power to issue such an injunction had it been the intention of Congress to grant the power. The power to issue such an injunction is an extreme and unprecedented invasion of the rights of collateral creditors, and even under a "* * * liberal construction * * * consonant with the purposes of this remedial legislation" (R. 323) it should not be lightly implied.

But, further, if Congress by plain implication has *denied* the power, as subdivision (l) of Section 77 clearly shows, such power cannot still be implied as an "incident" to powers expressly conferred.

To say that such power may be implied as an "incident" really amounts to legislation by the court. The court has in effect rewritten the statute to include an unprecedented power—a power that invades not only the remedy but the essence of the contract of a short-term collateral creditor. The essence of such a contract is the right to pick the time, after default, to enforce the terms of the note against the collateral. Liquidity is the *sine qua non* of short-term credit.

This result was reached by the court even though the power to enjoin the enforcement of the notes must be held to have been *purposely excluded by Congress,* if effect is given to the usual canons of statutory construction.

Under the well-established rule *"expressio unius est exclusio alterius"* applied to the jurisdiction of courts in *In re Heath,* 144 U. S. 92 (1892), where this Honorable Court said (p. 93): "* * * that the affirmative description of the cases in which the jurisdiction may be exercised implies a negative on the exercise of such power in other cases * * *", the power to enjoin creditors from enforcing their notes against collateral is clearly negatived by this statute.

Had Congress intended that the enforcement of notes against pledged collateral might be enjoined, it would have been a simple matter to add to subdivision (1) a provision to that effect. The important point is that Congress did not do so.

The construction of the court below wholly ignores, and gives no effect to, the words "commencement or continuance of any judicial proceeding" contained in subdivision (1). The court construes Section 77 *exactly as if these words were omitted* and the Act provided that the judge might enjoin the "enforcement of any lien upon the trust estate."

To give *any effect whatever* to the words "commencement or continuance of any judicial proceeding", which under all accepted rules of statutory construction the court is bound to do, it must be held that these words constitute a *limitation* on the power of the court to enjoin the enforcement of liens.

In drafting subdivision (1), Congress was considering and providing for injunctions to prevent

the enforcement of liens upon the trust estate. In providing that "the commencement or continuance of any judicial proceeding" might be enjoined, Congress clearly marked off the limits of the power, for, as stated by this Court in *In re Heath*, *supra*, the affirmative description of the cases in which the jurisdiction may be exercised implies a negative on the exercise of the power in other cases.

II

THE DECISION IS IN CONFLICT WITH THE WEIGHT OF AUTHORITY PRIOR TO THE AMENDMENT AND, LIKEWISE, WITH THE APPLICABLE DECISIONS OF THIS COURT

The opinion of the court below avoids a discussion of the decisions prior to the enactment of Section 77.

The court stated (R. 320):

> That the order may have been sustained under the Bankruptcy Act, before amendment under certain circumstances and as against creditors who occupy positions similar to those of the appellants is earnestly asserted. We are, however, for brevity's sake, avoiding a discussion of such questions because unnecessary.

The law prior to the enactment of the amendment is determinative of the issue in this case because, as already mentioned, subdivision (l) contains the only clause in Section 77 relating to injunctions, and because of subdivision (n) of Section 77, reading as follows:

> (n) In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the

> duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and his property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed.

For fifty years it has been well settled that pledgees holding in their own possession collateral, consisting of obligations of companies other than the debtor, have the unrestricted right to sell the collateral when they choose in spite of the receivership or bankruptcy of the pledgor. The reasons which impelled the adoption of this rule are well stated in the opinion of the court in the case of *In re Hudson River Navigation Corporation*, 57 F. (2d) 175 (C. C. A. 2d, 1932), where the court, in affirming an order of the District Court denying an injunction against the sale of collateral, stated (pp. 175–176):

> For practical purposes the pledgee has therefore immediate dominion as between the two, and with it goes the power to resist any action by the bankruptcy court, which must be founded on the fact that the bankrupt had such dominion, when the petition was filed. This was implicit in our ruling in *In re Mertens*, 144 F. 818, and we directly held so in *In re Mayer*, 157 F. 836; since when it has been generally understood that *bankruptcy does not touch the power of a pledgee of shares of stock to close out his collateral. Nothing would be more disturb-*

> *ing to transactions of the kind than a doubt thrown upon that ruling. Millions of dollars are daily lent upon like collateral, which fluctuates from hour to hour; unless the pledgee is free to choose his time to sell, his security may disappear.* The same is not indeed true of shares like those at bar, or of notes, neither of which vary rapidly in value; but the same legal reasons exist as to them also. The pledgee, having taken possession of the documents, supposes himself for just that reason to be the sole judge of his necessities, and lends on that understanding. So long as he keeps within the terms of the agreement, he need not concern himself with the pledgor's fate, or that of his creditors, who must stand in his shoes. (Italics supplied.)

In the present proceeding the collateral consists entirely of mortgage bonds or other secured obligations of companies other than the debtor, with the exception of $7,575,000 of the bonds of the debtor itself (R. 37).

But even as to the pledged bonds of the debtor itself, the overwhelming weight of authority prior to the enactment of Section 77 held that a Court of Bankruptcy would not enjoin the sale of the *secured* obligations of the debtor in the possession of the pledgee.

In *Jerome* v. *McCarter*, 94 U. S. 734 (1876), which has never been questioned, limited or criticized by any later decision, this Court in considering the rights of a pledge of secured mort-

gage bonds of the borrower itself, after the bankruptcy of the borrower, stated (p. 739):

> There is some proof that, when the company became bankrupt (Aug. 28, 1872), some of the bonds were held as collaterals for loans made to the company smaller in amount than the bonds pledged. But the bonds were subsequently sold by the pledgees, and the present holders hold them by absolute right. The position that the pledgees could not sell the pledge after the adjudication in bankruptcy, is quite untenable. It is sustained by nothing in the Bankrupt Act. The bonds were negotiable instruments. They passed by delivery, and even were there no expressed stipulation in the contracts of pledge, that the pledgee might sell on default of the pledgor, such a right is presumable from the nature of the transaction. *Certainly the Bankrupt Act has taken away no right from a pledgee secured to him by his contract.*
>
> In regard to the bonds covered by the McCarter mortgage, which is the one now in suit, we find no error in the decree of which the appellants can complain. Most of those bonds, though at first issued as collaterals for loans made to the mortgagors, have been sold, and they are now owned by the purchasers. There are some, it is true, that are still held in pledge; but the pledgees have a

> clear right to use them, either by sale or by collection, until the full amount of the debts due from the mortgagors is satisfied. * * * (Italics supplied.)

See also *Hiscock* v. *Varick Bank of New York*, 206 U. S. 28 (1907), in which this Court held that under Section 57 (h) of the Bankruptcy Act a creditor has an absolute right to sell his collateral according to the contract of pledge.

We submit that the decision of the court below is in conflict with the overwhelming weight of authority prior to the enactment of Section 77, and, likewise, is in conflict with the applicable decisions of this Court.

Mississippi Valley Trust Co. v. *Railway Steel Spring Co.*, 258 Fed. 346 (C. C. A. 8th, 1919), is the only case involving *secured* bonds of the same obligor such as constitute a part of the security held by the petitioner in this case which so far as we have been able to ascertain has been decided contrarily to the rule applied in the foregoing cases. This decision may be readily distinguished since it depended on the legal status of unissued treasury bonds under the Missouri law as expounded by the courts of that State.

III

THE DECISION IS NOT SUPPORTED BY THE RECORD, IS IN DISREGARD OF THE EXPRESS LANGUAGE OF THE STATUTE, AND, FURTHERMORE, IS BASED ON AN ADMITTEDLY ERRONEOUS ASSUMPTION OF FACT

We submit that the conclusions contained in the opinion of the court below that "it would be quite

impossible to proceed with any reorganization" if the petitioner and the banks should sell their collateral without control by the court (R. 324), and that such sale might defeat the purposes of Section 77 (R. 324), are not substantiated by any evidence of record in this case.

On the contrary, it would appear that under Section 77, contingent claims represented by securities of the debtor held as collateral must be treated as outstanding for the purposes of the reorganization plan, its acceptance and confirmation.

The last sentence of subdivision (b) of Section 77 reads as follows:

> The term "creditors" shall, except as otherwise specifically provided in this section, include, for all purposes of this section and of the reorganization plan, its acceptance and confirmation, all holders of claims, interests, or securities of whatever character against the debtor or its property, including claim for future rent, whether or not such claims, interests, or securities would otherwise constitute provable claims under this Act.

There is no specific provision in the Act which excepts contingent claims represented by securities of the debtor held as collateral from being included in classes of outstanding securities for the purpose of voting upon a plan. Hence, such claims must be treated as outstanding under the express provision of law above quoted.

We accordingly submit that in affirming the injunctional order issued by the District Court, upon

insufficient evidence that a reorganization could not be effected were the pledgees permitted to sell their collateral, and in disregard of the express language of the statute, the court below has so far sanctioned a departure by the lower court from the accepted and usual course of judicial proceedings as to call for an exercise of this Honorable Court's power of supervision.

Furthermore, in its opinion the court below has erroneously assumed that the issuance of the injunction has not resulted in serious injury to the position of the petitioner and the banks.

In its opinion, the Circuit Court states (R. 325):

> Appellants have received and will probably continue to receive the prompt payment of interest upon their claims secured by the debtor's and its subsidiaries' bonds.

As appears from the stipulation which has been signed by all the parties in this case (R. 341), petitioner received the interest due upon the notes of the debtor up until the time the present injunction was issued by the District Court. But since the date of the issuance of the injunction nearly a year ago the payment of interest has been discontinued on the notes of the debtor held by the petitioner and the banks. The only moneys received since such date by the petitioner properly applicable to interest on its claims are two minor payments, representing interest in part on one of the bond issues included in the pledged securities held by the petitioner (R. 341). From the language of

the petition for Order No. 15 (R. 37) it would appear that *the purpose of the injunction was to permit the cessation of interest payments without any risk of a sale of collateral by collateral note-holders.*

IV

THE QUESTION INVOLVED IS OF SUCH IMPORTANCE THAT WRITS OF CERTIORARI SHOULD BE GRANTED

It is submitted that the writs herein should be granted since, among other reasons, the question involved in this case is one of great public interest, gravity and importance. *In Lau Ow Bew, Petitioner,* 141 U. S. 583 (1891).

The decision of the Circuit Court of Appeals is highly disturbing to existing arrangements and practices in railroad finance. Since a debtor railroad is permitted to file a voluntary petition under Section 77, the effect of the construction placed on the Act by the court below is to take from the holders of short-term notes secured by collateral the essence of their contract, which is the right to choose the time, after default, to realize upon their collateral. This necessarily limits banks and governmental agencies from lending money to the railroads, and tends to destroy the credit of the railroads, adding to their difficulties at a time when they are faced with a major financial crisis because of lack of business, the competition of unregulated forms of transportation, and a rise in operating expenses due to wage increases, compulsory pensions,

and the increased cost of coal and other materials. It conflicts with the policies expresed by Congress in the Acts which empower the Reconstruction Finance Corporation and the Federal Emergency Administrator of Public Works to make loans to railroads.

It likewise casts doubt upon the enforcibility and collectibility of the loans which the Government has made to railroads through governmental agencies. The petitioner, Reconstruction Finance Corporation, has outstanding claims aggregating over $325,000,000 evidenced by notes of railroads containing terms substantially the same as contained in the notes involved in this case.

CONCLUSION

It is therefore respectfully submitted that the petition should be granted.

J. CRAWFORD BIGGS,
Solicitor General,
STANLEY REED,
General Counsel,
C. M. CLAY,
JOHN L. HOPKINS,
JAMES A. SPROWL,
Counsel for Petitioner,
Reconstruction Finance Corporation.

OCTOBER 1934.

APPENDIX

NATIONAL BANKRUPTCY ACT AS AMENDED

SEC. 2. The courts of bankruptcy as defined in the previous chapter, namely, the district courts of the United States in the several States, the Supreme Court of the District of Columbia, the district courts of the several Territories and possessions to which this title is, or may, after July 1, 1898, be applicable, and the United States court in the District of Alaska, are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as established on July 1, 1898, or as they may be thereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they were on July 1, 1898, or may be thereafter held, to * * * (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title; * * *. [11 U. S. C. and App., Sec. 11.]

SEC. 57. (h) The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise,

or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance. [11 U. S. C., Sec. 93 (h).]

SEC. 73. ADDITIONAL JURISDICTION.—In addition to the jurisdiction exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, courts of bankruptcy shall exercise original jurisdiction in proceedings for the relief of debtors, as provided in sections 74, 75, and 77 of this Act. [11 U. S. C. Sup. VII, Sec. 201.]

SEC. 77. (a) Any railroad corporation may file a petition stating that the railroad corporation is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization. The petition shall be filed with the court in whose territorial jurisdiction the railroad corporation, during the preceding six months or the greater portion thereof, has had its principal executive or operating office, and a copy of the petition shall at the same time be filed with the Interstate Commerce Commission hereinafter called the commission: *Provided,* That when any railroad, although engaged in interstate commerce, lies wholly within one State, such proceedings shall be brought in the Federal district court within the State in which the railroad is located. The petition shall be accompanied by payment to the clerk of a filing fee of $100, which shall be in addition to the fees required to be collected by the clerk under other sections of this Act. Upon the filing of such

a petition, the judge shall enter an order either approving it as properly filed under this section, if satisfied that such petition complies with this section and has been filed in good faith, or dismissing it if not so satisfied. If the petition is so approved, the court in which such order approving the petition is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located. The railroad corporation shall be referred to in the proceedings as a "debtor." Any corporation, the majority of the capital stock of which having power to vote for the election of directors is owned, either directly or indirectly through an intervening medium, by any railroad corporation filing a petition as a debtor under this section, or substantially all of whose properties are operated by such a debtor under lease or operating agreement may file, with the court in which such other debtor had filed such a petition, and in the proceeding upon such petition under this section, a petition stating that it is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization in connection with, or as a part of, the plan of reorganization of such other debtor; and thereupon such court shall have the same jurisdiction with respect to it, its property and its creditors and stockholders as the court has with respect to such other debtor. Creditors of any railroad corporation having claims or interests aggregating not less than 5 per centum of all the indebtedness of such railroad corporation as shown in the latest annual report which it has filed with the commission at the time when the

petition is filed, may, if the railroad corporation has not filed a petition under this section, but subject to first having obtained the approval of the Interstate Commerce Commission, after hearing, upon notice to such railroad corporation, file with the court in which such railroad corporation might file a petition under the provisions of this section, a petition stating that such railroad corporation is insolvent or unable to meet its debts as they mature and that such creditors propose that it shall effect a reorganization; upon such filing of such a petition copies thereof shall be filed with the commission and served by the petitioning creditors forthwith upon the railroad corporation; the railroad corporation shall, within ten days after such service, answer such petition; if such answer shall admit the jurisdiction of the court, that the claims of the petitioning creditors constitute the amounts necessary to entitle them to file such petition under this section, and that the railroad corporation is either insolvent or unable to meet its debts as they mature, the court shall, upon the filing of the recommendations of the commission in writing, enter an order approving the petition as properly filed under this section if satisfied that it complies with this section and has been filed in good faith, or disapprove it if not so satisfied; and if so approved the proceedings thereon shall continue with like effect as if the railroad corporation had itself filed a petition under this section; if such answer shall deny either the jurisdiction of the court or that the claims of the petitioning creditors constitute such necessary amounts or that the railroad corporation is insolvent or unable to meet its debts as they mature,

the court shall summarily try the issues, and if after the filing of the recommendations of the commission in writing it shall find that the petition complies with this section, and has been filed in good faith, the court shall enter an order approving the petition as properly filed under this section, and the proceedings thereon shall continue with like effect as if the railroad corporation had itself filed a petition under this section; otherwise the court shall dismiss the petition.

(b) A plan of reorganization within the meaning of this section (1) shall include a proposal to modify or alter the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; (2) may include, in addition, provisions modifying or altering the rights of stockholders generally, or of any class of them; (3) shall provide adequate means for the execution of the plan, which may, so far as may be consistent with the provisions of sections 1 and 5 of the Interstate Commerce Act, as amended, include the transfer or conveyance of all or any part of the property of the debtor to another corporation or to other corporations or the consolidation of the properties of the debtor with those of another railroad corporation, or the merger of the debtor with any other railroad corporation and the issuance of securities of either the debtor or any such corporation or corporations, for cash, or in exchange for existing securities, or in satisfaction of claims or rights, or for other appropriate purposes; and (4) may deal with all or any part of the property of the debtor. The term "securities" shall include evidences of indebtedness, either secured or unse-

cured, bonds, stocks, certificates of beneficial interest therein, and certificates of beneficial interest in property. The term "stockholders" shall include the holders of voting trust certificates. The term "creditors" shall, except as otherwise specifically provided in this section, include, for all purposes of this section and of the reorganization plan, its acceptance and confirmation, all holders of claims, interests, or securities of whatever character against the debtor or its property, including claim for future rent, whether or not such claims, interests, or securities would otherwise constitute provable claims under this Act.

(c) Upon approving the petition as properly filed the judge (1) may temporarily appoint from a panel of standing trustees qualified for such service to be selected and designated in advance by the commission a trustee or trustees of the debtor's estate, who shall have all the title and, subject to the control of the judge and consistently with the provisions of this section, shall exercise all the powers of a trustee appointed pursuant to section 44 or any other section of this Act, and, subject to the judge's control and the jurisdiction of the commission as provided by the Interstate Commerce Act as amended, shall have the power to operate the business of the railroad corporation; (2) shall fix the amount of the bond of such trustee or trustees and require the debtor, the trustee, or trustees to give such notice as the order may direct to creditors and stockholders and to cause publication thereof to be made at least once a week for two successive weeks of a hearing to be held within thirty days after such appointment, at which hearing or any adjournment thereof the judge may make permanent such ap-

pointment, or may terminate it and may, in the manner herein provided for the appointment of trustees, appoint a substitute trustee or substitute trustees, and in the same manner may appoint an additional trustee or additional trustees, and shall fix the amount of the bond of the substitute or additional trustee or trustees; the trustee or trustees and their counsel shall receive such compensation as the judge may allow within a maximum approved by the commission; (3) may, for cause shown, and with the approval of the commission, in accordance with section 20 (a) of the Interstate Commerce Act as amended, authorize the trustee or trustees to issue certificates for cash, property, or other consideration approved by the judge, for such lawful purposes and upon such terms and conditions and with such security and such priority in payments over existing obligations, secured or unsecured, as might in an equity receivership be lawful; (4) shall require the debtor, at such time or times as the judge may direct and in lieu of the schedules required by section 7 of this Act, to file such schedules and submit such other information as may be necessary to disclose the conduct of the debtor's affairs and the fairness of any proposed plan; (5) shall determine a reasonable time within which the claims and interests of creditors and stockholders may be filed or evidenced and after which no such claim or interest may participate in any plan except on order for cause shown; the manner in which such claims and interests may be filed or evidenced and allowed, and, for the purposes of the plan and its acceptance, the division of creditors and stockholders into classes according to the nature of their respective claims and interests; (6) shall cause

reasonable notice of such determination, or of the dismissal of the proceedings, or the allowance of fees or expenses, to be given creditors and stockholders by publication or otherwise; (7) if a plan of reorganization is not proposed or accepted, or, if proposed and accepted, is not confirmed, within such reasonable time as the judge may, upon cause shown and after considering any recommendation which has been filed by the commission, allow, may dismiss the proceeding; (8) may, within such maximum limits as are fixed by the commission, as elsewhere provided in subdivision (f) of this section, allow a reasonable compensation for the services rendered and reimbursement for the actual and necessary expenses incurred in connection with the proceeding and plan by officers, parties in interest, reorganization managers, and committees or other representatives of creditors or stockholders, and the attorneys or agents of any of the foregoing, and by such assistants as the commission with the approval of the judge may specially employ; and (9) may on his own motion or at the request of the commission refer any matters for consideration and report, either generally or upon specified issues, to one of several special masters who shall have been previously designated to act as special masters in any proceedings under this section by order of any Circuit Court of Appeals and may allow such master a reasonable compensation for his services. The Circuit Court of Appeals of each circuit shall designate three or more members of the bar as such special masters whom they deem qualified for such services, and shall from time to time revise such designations by changing the persons designated or reducing or adding to their number, as the public

interest may require: *Provided, howevr,* That there shall always be three of such special masters qualified for appointment in each circuit who shall in their respective circuits hear any matter referred to them under this section by a judge of any District Court. For all purposes of this section claims against a railroad corporation which would have been entitled to priority over existing mortgages if a receiver in equity of the property of the debtor had been appointed by a Federal court at the date of the filing of the petition hereunder shall be entitled to such priority, and holders of such claims shall be treated as a separate class of creditors. If in any case in which the issues have not already been tried under the provisions of subdivision (a) of this section any of the debtor's creditors shall, prior to the hearing provided for in subdivision (c), clause (2), of this section, appear and controvert the facts alleged in the petition, the judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, and unless the material allegations of the petition are sustained by the proofs shall dismiss the petition. Any creditor or stockholder shall be heard on the question of the permanent appointment of any trustee or trustees, the proposed recommendation, approval, or confirmation of any reorganization plan, and upon filing a petition for leave to intervene on such other questions arising in the proceeding as the judge shall determine. The debtor, or the trustees, if appointed, shall within fifteen days or, upon cause shown, such other time as may be directed by the judge, prepare (1) a list of all known bondholders and creditors of, or claimants against, the debtor or its property, and the amounts

and character of their debts, claims, and securities, and the last known post-office address or place of business of each creditor or claimant, and (2) a list of the stockholders of the debtor, with the last known post-office address or place of business of each. The contents of such lists shall not constitute admisisons by the debtor or the trustees in a proceeding under this section or otherwise. Such lists shall be open to the inspection of any creditor or stockholder of, or claimant against, the debtor, during reasonable business hours, upon application to the debtor or trustees, as the case may be.

(d) Before creditors and stockholders of the debtor are asked finally to accept any plan of reorganization, the Interstate Commerce Commission shall after due notice hold a public hearing at which the debtor shall present its plan of reorganization and at which, also, such a plan may be presented by the trustee or trustees, or by or on behalf of creditors of the debtor, being not less than 10 per centum in amount of any class of creditors. Following such hearing, the commission shall render a report in which it shall recommend a plan of reorganization (which may be different from any which has been proposed) that will, in its opinion, be equitable, will not discriminate unfairly in favor of any class of creditors or stockholders, will be financially advisable, will meet with the requirements of subdivision (g) of this section, and will be compatible with the public interest. In such report the commission shall state fully the reasons for its conclusions, and it may thereafter, upon petition for good cause shown, and upon further hearing if the commission shall deem necessary,

modify any of its recommendations and conclusions in a supplemental report stating the reasons for such modification. Thereafter the plan of reorganization recommended by the commission shall be submitted in such manner as the commission may direct to the creditors and stockholders of the debtor for acceptance or rejection, together with the report or reports of the commission thereon; and the commission may at the same time afford an opportunity to accept or reject any other plan of reorganization filed as in this subdivision (d) provided.

(e) A plan of reorganization shall not be finally approved by the commission until it has been accepted in writing and such acceptance has been filed in the proceeding by or on behalf of creditors holding two-thirds in amount of the claims of each class whose claims or interests would be affected by the plan, and by or on behalf of stockholders of the debtor holding two-thirds of the stock of each class: *Provided, however,* That if adequate provision is made in the plan for the protection of the interests, claims, and liens of any class of creditors or stockholders in the manner provided in clauses (5) and (6) of subdivision (g), of this section, then the acceptance of the plan by such class of creditors or stockholders shall not be requisite to the approval of the plan: *And provided further,* That the acceptance of stockholders shall not be requisite to the confirmation of the plan if (1) the judge shall have determined (a) that the corporation is insolvent, or (b) that the interests of stockholders will not be adversely affected by the plan, or (c) that the debtor has, pursuant to authorized corporate action, accepted the plan, and its stockholders are

bound by such acceptance. For the purposes of this section acceptance by a creditor or stockholder shall include acceptance in writing executed by him; or acceptance by his duly authorized attorney or committee acting under authority executed by him subsequent to the recommendation of the plan by the commission. Upon acceptance of the plan in accordance with the provisions of this subdivision (e) the commission may, without further proceedings, grant authority for the issue of any securities, assumption of obligations, transfer of any property, or consolidation or merger of properties, to the extent contemplated by the plan consistent with the purposes of the Interstate Commerce Act as amended. If the United States of America is directly a creditor or stockholder, the Secretary of the Treasury is hereby authorized to accept or reject a plan in respect of the interests or claims of the United States.

(f) If the plan recommended by the commission is accepted as provided in subdivision (e), the commission shall thereupon certify the plan to the court together with its approval thereof and that the same has been so accepted, together with a report of the proceedings before it and its conclusions thereon. If the plan accepted as provided in subdivision (e) differs from the plan recommended by the commission it shall, upon acceptance, be submitted to the commission, which shall hear all interested parties upon such notice and subject to such rules and regulations as it shall prescribe. If after such hearing the commission determines that the accepted plan in its opinion is equitable and will not discriminate unfairly in favor of any class of creditors or stockholders; will be financially ad-

visable; will meet the requirements of subdivision (g) of this section; and will be compatible with the public interest; the commission shall thereupon certify the plan to the court, together with its approval thereof and that the same has been duly accepted, and together with a report of the proceedings before it and its findings and conclusions thereon. The commission shall also, after hearing if necessary, fix the maximum compensation and reimbursement which may be allowed by the court pursuant to clause (8) of subdivision (c) of this section: *Provided,* That unless good and sufficient reasons appear therefor no allowance for fees or compensation shall be made to officers of corporations who have acted as managers or in any capacity in connection with the reorganization when such corporation had an interest in the matter. No plan of reorganization shall be confirmed in any proceeding under this section except upon the approval of the Interstate Commerce Commission certified to the court. If the commission shall decline to issue such a certificate it shall file in the proceeding its decision, specifying the particular grounds upon which it bases its disapproval of the plan.

(g) Upon such approval by the commission, and after hearing such objections as may be made to the approved plan, the judge shall confirm the plan if satified that (1) the approved plan complies with the provisions of subdivision (b) of this section, is equitable and does not discriminate unfairly in favor of any class of creditors or stockholders; (2) all amounts to be paid by the debtor or by any corporation or corporations acquiring the debtor's assets, for services or expenses incident to the reorganization and cost of financing,

have been fully disclosed and are reasonable, or are to be subject to the approval of the judge; (3) the offer of the plan and its acceptance are in good faith and have not been made or procured by any means or promises forbidden by this Act; (4) the approved plan provides for the payment of all costs of administration and other allowances made by the court, except that compensation or reimbursement provided for in subdivision (c), clause (8), of this section may be paid in securities provided for in the plan if those entitled thereto will accept such payment and the court finds such compensation reasonable; (5) the approved plan provides, with respect to stockholders of any class the acceptance of which is requisite to the confirmation of the plan, and who would not become bound by the plan under the provision of subdivision (h) of this section, and of which more than one-third have not accepted the plan, adequate protection for the realization by them of the value of their equity, if any, in the property of the debtor dealt with by the plan either by a sale of the property at not less than a fair upset price, or by appraisal and payment in cash either of the value of their stock or, at the objecting stockholder's election, of the value of the securities, if any, allotted to such stock under the plan; (6) the plan provides with respect to any class of creditors, the acceptance of which is requisite to the confirmation of the plan, and who would not become bound by the plan under the provisions of subdivision (h) of this section, adequate protection for the realization by them of the value of their securities, liens, and claims, either (a) by the sale of such property subject to their liens, if any, or (b) by the sale free of such liens at not less

than a fair upset price, and the transfer of such liens to the proceeds of such sale, or (c) by appraisal and payment in cash of either the value of such liens and claims or, at the objecting creditors' election, the value of the securities allotted to such liens and claims under the plan. Section 57, clause (h), of this Act shall be applicable to the appraisal of securities under this section, and the value of the unpaid balance shall be appraised as an unsecured claim; and (7) the debtor, and every other corporation issuing securities or acquiring property under the plan, is authorized by its charter or by applicable State or Federal laws, upon confirmation of the plan, to carry out the plan. In the case of a sale or appraisal under clause (5) or (6) of this subdivision (g) the court shall refer to the commission for its consideration and determination the amount to be fixed as the upset price and the appraisal of any securities.

(h) Upon such confirmation the provisions of the plan shall be binding upon (1) the corporation, (2) all stockholders if the judge shall have determined (a) that the corporation is insolvent, or (b) that the interests of stockholders will not be adversely affected by the plan, or (c) that the debtor has, pursuant to authorized corporate action, accepted the plan and its stockholders are bound by such acceptance, (3) all stockholders of each class of which two-thirds in amount shall have accepted the plan, (4) all creditors whose claims are payable in cash in full under the plan, (5) all creditors entitled to priority under subdivision (c) of this section, whose claims are not payable in cash in full under the plan, provided two-thirds in amount of such creditors shall have accepted the plan in writ-

ing filed in the proceeding, (6) all other unsecured creditors, provided two-thirds in amount of such creditors shall have accepted the plan in writing filed in the proceeding, and (7) all secured creditors of each class of which two-thirds in amount shall have accepted the plan. The confirmation of the plan shall discharge the debtor from its debts except as provided in the plan. Upon confirmation of the plan by the judge, the debtor and other corporations affected by the plan, or organized or to be organized for the purpose of carrying out the plan, shall, subject to the jurisdiction of the Commission, have full power and authority to put into effect and carry out the plan and the orders of the judge relative thereto, the laws of any State or the decision or order of any State authority to the contrary notwithstanding. In the event that the judge should disapprove the plan he shall file an opinion stating his reasons therefor.

(i) The provisions of sections 721, 722, 723, 724, and 725 of the Revenue Act of 1932 shall not apply to the issuance, transfers, or exchange of securities or filing of conveyances to make effective any plan of reorganization confirmed under the provisions of this section.

(j) Upon the confirmation of the plan the property dealt with by the plan, when transferred and conveyed to the debtor or other corporation or corporations provided for by the plan, or if no trustee or trustees have been appointed when held by the debtor pursuant to the plan, shall, as the court may direct, be free and clear of all claims of the debtor, its stockholders and creditors, except such as may consistently with the provisions of the plan be reserved in the order confirming the plan or directing

such transfer and conveyance, and the court may direct the trustee or trustees, or if there be no trustee or trustees the debtor, to make any such transfer and conveyance, and may direct the debtor to join in any such transfer or conveyance made by the trustee or trustees. Upon the termination of the proceeding a final decree shall be entered discharging the trustee or trustees, if any, making such provisions as may be equitable, and closing the case.

(k) If a receiver of all or any part of the property of a corporation has been appointed by a Federal or State court, whether before or after this amendatory Act takes effect, the railroad corporation may nevertheless file a petition or answer under this section at ar time thereafter, but if it does so and the petition is approved the trustee or trustees appointed under the provisions of this section shall be entitled forthwith to possession of such property, and the judge shall make such orders as he may deem equitable for the protection of obligations incurred by the receiver and for the payment of such reasonable administrative expenses and allowances in the prior proceeding as may be fixed by the court appointing said receiver within maximum limits approved by the commission. If a receiver has been appointed by a Federal or State court prior to the dismissal under subdivision (c), clause (7), of a proceeding under this section, the judge may include in the order of dismissal appropriate provisions directing the trustee to transfer possession of the debtor's property within the territorial jurisdiction of such court to the receiver so appointed, upon such terms as the judge may deem equitable for the protection of obligations incurred

by the trustee and for the payment of administrative expenses and allowances in the proceeding hereunder. For the purposes of this section the words "Federal court" shall include the district courts of the United States and of the Territories and possessions to which this Act is or may hereafter be applicable, the Supreme Court of the District of Columbia, and the United States Court of Alaska

(l) In addition to the provisions of section 11 of this Act for the staying of pending suits against the debtor, such suits shall be further stayed until after final decree the judge may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree.

(m) A certified copy of an order confirming a plan of reorganization shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the order was made. A certified copy of an order directing the transfer and conveyance of the property dealt with by the plan as provided in subdivision (j) of this section shall be evidence of the transfer and conveyance of title accordingly, and if recorded shall impart the same notice that a deed if recorded would impart.

(n) In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and his property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudi-

cation had been entered on the day when the debtor's petition was filed.

(o) No judge or trustee acting under this Act shall change the wages or working conditions of railroad employees, except in the manner prescribed in the Railroad Labor Act, or as set forth in the memorandum of agreement entered into in Chicago, Illinois, on January 31, 1932, between the executives of twenty-one standard labor organizations and the committee of nine authorized to represent Class 1 railroads.

(p) No judge or trustee acting under this Act shall deny or in any way question the right of employees on the property under his jurisdiction to join the labor organization of their choice, and it shall be unlawful for any judge, trustee, or receiver to interfere in any way with the organizations of employees, or to use the funds of the railroad under his jurisdiction, in maintaining so-called company unions, or to influence or coerce employees in an effort to induce them to join or remain members of such company unions.

(q) No judge, trustee, or receiver acting under this Act shall require any person seeking employment on the property under his jurisdiction to sign any contract or agreement promising to join or to refuse to join a labor organization; and if such contract has been enforced on the property prior to the property coming under the jurisdiction of said judge, trustee, or receiver, then the said judge, trustee, or receiver, as soon as the matter is called to his attention, shall notify the employees by an appropriate order that said contract has been discarded and is no longer binding on them in any way.

(r) The term "railroad corporation" as used in this Act means any common carrier by railroad engaged in the transportation of persons or property in interstate commerce, except a street, suburban, or interurban electric railway which is not operated as a part of a general railroad system of transportation or which does not derive more than 50 per centum of its operating revenues from the transportation of freight in standard steam railroad freight equipment.

(s) In proceedings under this section, claims for personal injuries to employees of a railroad corporation, and claims of personal representatives of deceased employees of a railroad corporation arising under State or Federal laws, shall be preferred claims against the assets of such railroad corporation in receivership or in reorganization as herein provided, such claims to be subordinate only to costs of administration of such receivership or reorganization. [11 U. S. C. Sup. VII, Sec. 205.]

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In the Supreme Court of the United States

OCTOBER TERM, 1934

Nos. 489–490

IN THE MATTER OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor

RECONSTRUCTION FINANCE CORPORATION, PETITIONER

v.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY et al.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RECONSTRUCTION FINANCE CORPORATION

OPINION BELOW

There was no opinion, either oral or written, in the District Court. The opinion of the Circuit Court of Appeals (R. 313) is reported in 72 F. (2d) 443.

JURISDICTION

The injunctional order of the District Court was entered November 22, 1933 (R. 101). Separate appeals were allowed on the same day, December 12,

1933, by the District Court (R. 163) and by the Circuit Court of Appeals (R. 278). These appeals were consolidated for hearing in the Circuit Court of Appeals (R. 298). That court affirmed the injunctional order on July 23, 1934 (R. 313) and entered two judgments accordingly (R. 332, 338). A petition for writs of certiorari was filed in this Court, and certiorari was granted on December 3, 1934. The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

PRINCIPAL QUESTION PRESENTED

Where a debtor railroad and its properties are being administered in reorganization proceedings brought under Section 77 of the National Bankruptcy Act, as amended, c. 204, 47 Stat. 1474, has the bankruptcy court power (contrary to the rule in ordinary bankruptcy proceedings), summarily to enjoin the Reconstruction Finance Corporation, as the holder of secured notes of the debtor railroad, from selling the collateral security held by it, when such sale is authorized by the pledge agreement and does not require judicial proceedings?

STATUTES INVOLVED

The pertinent statutes and orders are set out in the Appendix to this brief pp. 1, 3, 4, 85–109, 126, 158.

STATEMENT

The facts appear of record as follows:

On June 7, 1933, The Chicago, Rock Island and Pacific Railway Company (hereinafter called the

debtor), an Illinois and Iowa corporation, filed a petition (R. 2) in the United States District Court for the Northern District of Illinois under Section 77 of the Bankruptcy Act, as amended, alleging that it was "unable to meet its debts as they mature", and that it desired to effect a plan of reorganization under the said section. On the same day an order was entered by the District Court finding that the petition was properly filed (R. 6).

No trustees were appointed at the time, and thereafter and until the appointment of trustees by the District Court on November 22, 1933 (R. 105), the debtor operated its railroads and other property itself, subject to the court's supervision. By orders entered August 28, 1933, and October 24, 1933, petitions of certain of the debtor's subsidiaries to effect plans of reorganization under Section 77 in connection with, or as a part of, the plan of reorganization of the debtor were allowed by the District Court (R. 26, 97).

The petitioner, Reconstruction Finance Corporation, a corporation of which all of the stock is owned by the United States of America, is a creditor of the debtor in the aggregate principal amount of $13,659,877.58, evidenced by notes of the debtor for that amount which matured March 1, 1934. As collateral security therefor the Reconstruction Finance Corporation holds in pledge $7,575,000 face amount of bonds of the debtor; $27,599,973.34 face amount (exclusive of $4,380,000 face amount pledged under the prior lien of a mortgage and held by the trustee or

trustees of such mortgage and on which Reconstruction Finance Corporation has a second lien) of bonds of companies other than the debtor; $747,492.51 face amount of receivers' certificates of a company other than the debtor; and an assignment of the debtor's distributive share (estimated by the debtor at $1,400,000) in certain assets of The Railroad Credit Corporation.

The notes of the debtor held by the Reconstruction Finance Corporation evidence loans made by it to the debtor, prior to the institution of the proceedings under Section 77. In accordance with Section 5 of the Reconstruction Finance Corporation Act (c. 8, 47 Stat. 5), which requires the approval of the Interstate Commerce Commission of loans to railroads, the Commission gave its approval of these loans in Finance Dockets Nos. 9384 and 9835 (R. 37). The reports of the Commission may be found in 184 I. C. C. 597, 735, and 189 I. C. C. 522. In these reports, which for the convenience of this Court, are set forth in the Appendix pp. 5, 26, 49, 67, the Commission found that the Reconstruction Finance Corporation would be adequately secured, if the collateral above-mentioned was pledged as security for the notes.

The notes provide that in case the debtor defaults either in paying principal or interest on said notes, or fails on notice to furnish additional collateral, or becomes insolvent or goes into receivership, that the Reconstruction Finance Corporation is authorized to sell said collateral through a broker or at public or

private sale, either for cash or upon credit, and without any demand, advertisement, or notice. The Reconstruction Finance Corporation is further authorized to purchase said collateral for itself. (For provisions of the notes see R. 45, 46, 47.)

The debtor is also indebted to five banks on notes in the aggregate principal amount of $4,125,000, in substantially the same form, likewise secured by collateral (R. 39).

After the institution of reorganization proceedings under Section 77 and until the entry (on November 22, 1933) of the District Court's injunctional order herein, all interest becoming due and payable on the notes held by Reconstruction Finance Corporation and these banks was duly paid by the debtor (R. 341). The payment of interest on the various notes held by the Reconstruction Finance Corporation was allowed from time to time upon petitions of the debtor (R. 17, 22, 36, 75).

On September 26, 1933, and prior to the appointment of trustees, the debtor filed in the District Court a petition (R. 37) which alleged that the value of the collateral securing each of said notes was substantially in excess of the amount of the notes; that if the holders of said notes should convert or sell the collateral, "it would cause a substantial and irreparable loss to the trust estate"; and that "in case of a forced sale of the said collateral at the present time, it might result in a substantial deficiency judgment against the Debtor herein, and would dilute the respective interests in

the trust estate", of the holders of the debtor's bonds, of other creditors and of the debtor itself. The petition asked the District Court for instructions as to the payment of interest due October 1; 1933, on one of the notes held by the Reconstruction Finance Corporation, and for a determination "whether the Court should enjoin and restrain the holders of the said collateral notes, *in the event of default in the payment of interest thereon*, or other default therein, from selling and converting the said collateral, or any part thereof." The petition further requested that *if the court should be of such opinion*, an injunctional order should be entered. (R. 40, 42, 43.) (Italics ours.)

Notice of the debtor's intention to present this petition was given to the Reconstruction Finance Corporation by registered mail addressed to it at Washington, D. C. (R. 56). No process was issued or even prayed for against the Reconstruction Finance Corporation, nor was it a party to the reorganization proceeding. On the day upon which the debtor's petition was filed with the District Court, the Reconstruction Finance Corporation appeared by counsel specially, and solely for the purpose of objecting to the jurisdiction of the court, for the reasons that the court had (1) no jurisdiction over its person, (2) no jurisdiction over or possession of the property, the sale of which was sought to be restrained and (3) no jurisdiction to grant in a summary proceeding the injunction subsequently

granted. (R. 75.) The banks entered similar appearances. (R. 68–75.)

In support of the debtor's petition, one of the protective committees (for the debtor's General Mortgage 4% Bonds), named as respondents herein, appeared on the same day, although not at the time a party to the debtor proceeding, and filed an answer (R. 59), asking that said District Court enjoin the sale of the collateral. Another protective committee, likewise not at the time a party, filed an affidavit of its Chairman, Dwight S. Beebe (R. 65), which stated that $145,749,000 face amount of bonds and *stock* of "the Debtor's system" were pledged with trustees under three of the debtor's mortgages; that *on information and belief*, "in certain events described in the Indentures under which the aforesaid Trustees are acting, such Trustees are given the right to sell such collateral"; that he wished "*to point out* that a decision holding that the Reconstruction Finance Corporation and the Banks should not be enjoined from selling" the collateral held by them "would also determine that the Trustees of the three Bond issues mentioned above had the right to sell" the collateral pledged with them; and "that *the contentions of the Committee are* (1) that in a proceeding under the new Section 77 of the Bankruptcy Act the Court has power to enjoin pledgees from selling collateral where it is essential in order to carry out the purpose of the proceeding, and (2) that it is essential to enjoin such sales in a case such as this where the collateral consists of obligations of the Debtor Sys-

tem in principal amount vastly exceeding the indebtedness" (R. 66, 67, 68). (Italics ours.) Neither in the debtor's petition nor in the affidavit of Mr. Beebe was there any allegation or statement made that the Reconstruction Finance Corporation had threatened, or intends, to sell the collateral in its possession.

Thereupon, on the same day (September 26, 1933), the District Court entered an order (R. 75) authorizing the debtor to pay the interest in the amount of $76,313.34, due September 30, 1933, on one of the notes of the Reconstruction Finance Corporation, but reserved decision on the other matters contained in the debtor's petition. It was stipulated in open court (R. 119) that the Reconstruction Finance Corporation and the banks might present arguments and file briefs on the merits, without waiving their special appearances. Under this stipulation, the Reconstruction Finance Corporation and the banks presented briefs challenging the legal sufficiency of the petition, as well as the jurisdiction of the court. No answers were filed by Reconstruction Finance Corporation and the banks and no evidence of any kind was introduced by any party.

Thereafter, on November 22, 1933, the District Court, without either oral or written opinion, issued an injunctional order, restraining the petitioner and the five banks from "* * * converting, selling or otherwise disposing of the collateral held by them as security for the promissory notes of the Debtor, or any part thereof, until further order of this Court."

The order was, by its terms, predicated on the assumption that the sale of the collateral in question would "* * * hinder, impede, obstruct, delay, and in effect prevent the orderly preparation and consummation of a plan of reorganization * * *" of the debtor, and that the injunction was "* * * necessary for the enforcement of the provisions of Section 77 * * *" (R. 101, 103, 104).

This order was entered upon the record, consisting of the debtor's petition, answer of one of the protective committees, the affidavit of Dwight S. Beebe, the special appearances of Reconstruction Finance Corporation and the banks, and affidavits of nonresidence, filed in behalf of three of the banks.

Appeals from said order were allowed by the District Court (R. 163) and by the Circuit Court of Appeals (R. 278) on December 12, 1933. These causes were subsequently consolidated for hearing by order of the Circuit Court of Appeals (R. 298). A hearing was had in the Circuit Court of Appeals on May 28, 1934; and on July 23, 1934, that court rendered an opinion affirming the order of the District Court (R. 313) and entered two judgments accordingly (R. 332, 338).

At this point we desire to direct this Court's attention to the fact that the opinion of the Circuit Court of Appeals contains six errors as to important facts, and that the conclusions of the Circuit Court of Appeals are largely predicated on these errors.

(1) The Circuit Court of Appeals stated (R. 325) that:

> Appellants have received and will probably continue to receive the prompt payment of interest upon their claims secured by the debtor's and its subsidiaries' bonds.

Although interest was paid as it became due upon the debtor's notes held by the Reconstruction Finance Corporation and the banks until the entry of the injunctional order, *no interest whatever, due thereafter*, has been paid (R. 341, 342). The notes held by the Reconstruction Finance Corporation and the banks matured on March 1, 1934 (R. 37), and the principal thereof has not been paid.

(2) The Circuit Court of Appeals stated (R. 325) that the District Court

> sought to protect the great mass of the debtor's creditors *without injuring the position of appellants* * * * (Italics supplied.)

In fact, when the debtor's petition for an injunction was filed the *listed* collateral held by the Reconstruction Finance Corporation as security for the debtor's notes had a market value based on last prior sales on the New York Stock Exchange of $4,020,950. As this Court may see from the table below, the market value of the said collateral as of December 15, 1934, was $3,095,582. In other words, the Reconstruction Finance Corporation has suffered since the injunction a shrinkage in market value of its *listed* collateral of $925,368 or 23.0 percent, which may be seen from the following table:

TABLE No. 1.—*Depreciation of market value of listed collateral from Nov. 21, 1933, to Dec. 15, 1934—The Chicago, Rock Island & Pacific Railway Co. (date of injunction, Nov. 22, 1933)*

	Face amount	New York Stock Exchange last sale prices		Market value	
		Nov. 21, 1933	Dec. 15, 1934	Nov. 21, 1933	Dec. 15, 1934
C. R. I. & P. 1st and refunding mtge. 4% bonds of 1934	$7,575,000	18½	15⅞	$1,401,375	$1,202,531
St. Paul & Kansas City Short Line 1st mtg. 4½% bonds of 1941	9,374,500	23	15¼	2,156,135	1,429,611
Rock Island, Ark. & La. R. R. Co. 1st mtg. 4½% bonds of 1934	3,862,000	12	12	463,440	463,440
Total collateral with a market	20,811,500			4,020,950	3,095,582

Actual and percentage decrease in market value, $925,368 (23.0%).

NOTE.—Table prepared by Railroad Division of the Reconstruction Finance Corporation.

It should also be noted that this loss does not take into account any additional loss sustained on *unlisted* collateral, which is not dealt in on any exchange and for which, accordingly, there is no established market value.

(3) The Circuit Court of Appeals stated (R. 314) that—

> *nine* wholly owned subsidiary railroad companies, whose properties were under *long-term leases to debtor were permitted to join with the principal debtor in its petition for reorganization.* (Italics supplied).

In fact, only *six* of the subsidiary railroad companies so permitted to join the principal debtor were under *long-term* leases to debtor (R. 92–93). Careful scrutiny of facts would have disclosed to the Circuit Court of Appeals that—

(i) The "Memphis Terminal" operates under *a lease terminable at will.* (R. 93.)

(ii) The "Omaha Terminal" operates under *a lease terminable at will.* (Ibid.)

(iii) The "Peoria Terminal" so far as appears from the record is *not leased at all.* (R. 92.)

This misapprehension is significant when we analyze the description used by the respondents in their brief in answer to the petition for writs of certiorari, of the collateral as "obligations of the debtor system".

(4) The Circuit Court of Appeals mistakenly assumes (R. 324) that if the collateral is sold a plan of reorganization in these proceedings will have to provide for all of the bonds of the debtor and its subsidiaries constituting the collateral held by the Reconstruction Finance Corporation. The Circuit Court of Appeals failed to notice that the subsidiaries, the bonds of which are listed below, are *not* parties to the reorganization proceeding.[1]

	Face value
Kankakee & Seneca Railroad Company 4½% Bonds	$352,000.00
Rock Island Improvement Company:	
Blue Island Shops Bonds	199,000.00
Cedar Rapids Terminal Bonds	369,732.99
Little Rock Mortgage Bonds	278,492.49
First and Collateral 5% Bonds	3,310,000.00
Trinity & Brazos Valley Receiver's Certificates	747,492.51
Trinity & Brazos Valley First Mortgage Bonds (now pledged under Colorado & Southern Mortgage; C. R. I. & P. has agreed to pledge them with Reconstruction Finance Corporation upon release from that Mortgage May 1, 1935)	4,380,000.00
Total	9,636,717.99

[1] It should be noted that on the date of the petition for the injunction only two (R. 26) were parties to the reorganization proceeding, though this number was subsequently increased prior to the District Court's order (R. 97).

Contrary to the implication of the Circuit Court of Appeals' opinion, there is no reason why the plan of reorganization will have to provide for the above securities at all.

(5) The Circuit Court of Appeals failed to note that The Railroad Credit Corporation, the debtor's right to share in the assets of which is included in the collateral, and which right is estimated by the debtor to have a value of $1,400,000 (R. 38), is a corporation entirely alien to the debtor or any of its subsidiary railroad companies. The sale or assignment by the Reconstruction Finance Corporation of this right cannot possibly affect a plan of reorganization of the debtor. The respondents (brief in answer to petition for writs of certiorari, p. 6) admit that this is not "an obligation of the debtor system."

(6) The Circuit Court of Appeals mistakenly assumes (R. 324) that a plan of reorganization is in preparation. On the contrary, it is admitted by the debtor's trustees that no plan of any sort is under consideration by the interested parties, in spite of the fact that under subdivision (d) of Section 77 the debtor is under a duty to file a plan. (See Appendix, p. 167.)

We further desire to direct this Court's attention to the fact that this case involves the propriety of the injunction as to collateral which consists of obligations of companies other than the debtor. Only $7,575,000 face amount of collateral held by the Reconstruction Finance Corporation consists of obligations of the debtor.

Respondents in their brief in opposition to the petition for writs of certiorari have argued as though *all* of the collateral consisted of obligations of the debtor, The Chicago, Rock Island and Pacific Railway Company. Their brief refers to the collateral as "obligations of the debtor system", as though all of the collateral were of a single class.

This is not the case. It appears from the petition for the injunction that the collateral pledged with the Reconstruction Finance Corporation consists of the following securities:

Listed Collateral:	
The Chicago, Rock Island and Pacific Railway Company First and Refunding 4% Gold Bonds	$7,575,000.00
St. Paul and Kansas City Short Line Railroad Company First Mortgage 4½% Gold Bonds	9,374,500.00
Rock Island, Arkansas and Louisiana Railroad Company First Mortgage 4½% Gold Bonds	3,862,000.00
Total	20,811,500.00
Unlisted Collateral:	
The Chicago, Rock Island and Gulf Railway Company Extension First Mortgage 5% Bonds	6,927,000.00
The Chicago, Rock Island and Gulf Railway Company Carrollton Branch 6% Bonds	331,000.00
Kankakee & Seneca Railroad Company 4½% Bonds	352,000.00
Rock Island and Dardenelle Railway Company First Mortgage 5% Bonds	100,000.00
Rock Island Memphis Terminal Depot First Mortgage 5% Bonds	900,000.00
Rock Island Memphis Terminal First Mortgage 5% Bonds	400,000.00
Rock Island Omaha Terminal First Mortgage 5% Bonds	906,000.00
Rock Island Improvement Company:	
Blue Island Shops Bonds	199,000.00
Cedar Rapids Terminal Bonds	369,732.99
Little Rock Mortgage Bonds	278,492.49
First and Collateral 5% Bonds	3,310,000.00
Trinity & Brazos Valley Receiver's Certificates	747,492.51

Unlisted collateral—Continued.	
Trinity & Brazos Valley First Mortgage Bonds (now pledged under Colorado & Southern Mortgage; C. R. I. & P. has agreed to pledge them with Reconstruction Finance Corporation upon release from that Mortgage May 1, 1935)	$4,380,000.00
Total	$19,200,717.99
Assignment of Company's distributive share in assets of Railroad Credit Corporation, approximately	$1,400,000.00

It does not appear from the petition (R. 37) (nor from the supporting affidavit (R. 65) of Mr. Beebe for that matter), on the basis of which the injunction was granted, that the debtor, The Chicago, Rock Island and Pacific Railway Comapny, is itself liable on any of the collateral, with the exception of the $7,575,000 of its own First and Refunding Gold Bonds.

Specifications of error

The Reconstruction Finance Corporation has assigned as error the holding—

(a) That the District Court had jurisdiction over petitioner in the premises;

(b) That, even if it had such jurisdiction, it had power to enjoin the petitioner from enforcing against the pledged collateral the terms of the notes;

(c) That this petitioner should be enjoined from selling the collateral held by it as security for the notes of the debtor;

(d) That this petitioner should be enjoined from selling the collateral held by it consisting of the secured obligations of companies other than the debtor;

(e) That the sale of such collateral would defeat the purposes of Section 77 of the Bankruptcy Act, as amended;

(f) That the District Court was justified in issuing the injunction on the record in this case; and

(g) That the order of the District Court should be affirmed.

This Court granted writs of certiorari on December 3, 1934.

SUMMARY OF ARGUMENT

I

The injunction under review was granted in a summary proceeding. It was assumed by the Circuit Court of Appeals that it could not have been granted in such a proceeding prior to the enactment of Section 77. The Circuit Court of Appeals stated it was an exercise of authority on the part of the court which was necessary to the effective use of powers expressly conferred by Section 77.

As shown under point II, the express provisions of Section 77 negative the implication of the power to grant the order either in a summary or a plenary proceeding, where the sale of the collateral (as here) is permitted by the terms of the pledge agreement and does not require judicial proceedings. The petition on which the order was granted is insufficient as a bill in a plenary suit. If a summary proceeding would lie the affidavit filed with the petition does not properly allege anything in support thereof.

II

In ordinary bankruptcy proceedings, the law has been well settled for many years that the court may not, under any provision of the Bankruptcy Act here applicable, enjoin the sale, either of the obligations of other companies, which constitute the bulk of the collateral held by this petitioner, or of the $7,575,000 face amount of the debtor's own obligations, likewise comprised in its collateral.

The common-law right involved, recognized both in bankruptcy and in equity receiverships, is not impaired by the enactment of Section 77, subdivision (n) of which provides that in proceedings thereunder and consistent with the provisions thereof, the rights and liabilities of creditors shall be the same as in ordinary bankruptcy proceedings. Furthermore, subdivision (1) of Section 77, which authorizes the court to stay "the commencement or continuance of any judicial proceeding to enforce any lien upon the estate" of the debtor, by expressly authorizing the court to stay only judicial proceedings, negatives the intent that the sale of collateral may be enjoined, when sold under a power of sale contained in the pledge agreement and without the aid of judicial proceedings. This construction alone gives effect to the words "commencement or continuance of any judicial proceeding." There is no other provision of Section 77 which in any way confers upon the court the power to issue injunctions. It should also be noted that subdivision (1) of Section 77 is applicable only to judicial proceedings to enforce "any lien." A pledgee of negotiable

securities has a greater interest therein than a mere lien. That the rule in ordinary bankruptcy has not been changed by the enactment of Section 77 is strengthened by the construction which several courts have placed upon a similar provision of Section 74 and by the legislative history of both enactments. Authority for the injunction is not granted by subclause 15 of Section 2 of the Bankruptcy Act, the so-called "omnibus clause," for, as this Court has held, subclause 15 of Section 2 must be construed with regard for the express provisions of the Bankruptcy Act which are applicable to this case. Subclause 15 of Section 2 has never in the past been construed to authorize a bankruptcy court to enjoin the sale of pledged collateral.

Regardless of these considerations, Section 77 must be construed with Section 5 of the Reconstruction Finance Corporation Act (under the authority of which the loans from this petitioner involved in this case were made), which expressly empowers the Reconstruction Finance Corporation to take over and liquidate collateral accepted by it as security for such loans. The express provisions of Section 5 of the Reconstruction Finance Corporation Act are controlling in this case, if they are to be given any pragmatic effect, consistent with the underlying purposes of the Reconstruction Finance Corporation.

Patently, this is not a case of a reconciliation of an earlier statute with a later enactment containing

inconsistent provisions. This Court should not permit a derivation of power from subclause 15 of Section 2 of the Bankruptcy Act, couched in *general* language, to prevail over a power *expressly* granted by Congress under Section 5 of the Reconstruction Finance Corporation Act.

III

The economic policy of financing railroads by short-term loans secured by pledge was recognized by the Congress in the Reconstruction Finance Corporation Act, and given specialized administrative control by the Interstate Commerce Commission; that policy should not be called into question as is done by the construction placed upon Section 77 by the decision of the Circuit Court of Appeals. Affirmance of that decision would endanger normal commerical processes. Uneconomic corporate holdings will tend to be perpetuated.

The supposed distinction between interruption of a remedy and impairment of a right is meaningless in this case. Since the injunction is predicated upon the assumption that it is necessary until a plan of reorganization for the debtor can be effected, the contractual right is invaded without substituting an equally efficient and adequate remedy.

The Congress, through the Reconstruction Finance Corporation Act, elected to follow the policy during the existing emergency of financing railroads by short-term collateral loans from this petitioner. Each

transaction is controlled by the Interstate Commerce Commission as guardian of the soundness of the financial policy involved. This amounts to a congressional determination of policy which should not be overridden by a strained statutory construction.

IV

The findings of the District Court that sale of the collateral, held by this petitoner and the banks, would in effect prevent the debtor's reorganization and that "it is necessary to the enforcement of the provisions of Section 77" that the sale of said collateral be enjoined "pending the preparation and consummation of a reorganization plan" are mere assumptions and nothing more.

Under the express provisions of Section 77, the note holder is entitled both to vote on his note and in the various classes of creditors in which the collateral falls; hence, there can be no such shifting of classes of creditors or changes in the size of the various classes of creditors as will prevent the preparation and effectuation of a plan. In any reorganization of the debtor the secured obligations of other companies comprised in this petitioner's collateral must be treated as outstanding, as they would have to be if they were still held in the treasury of the debtor. The validity of the pledge in this case is not questioned. To deny to the pledgee holding collateral the benefit of his contract is to give other creditors of the debtor,

and the debtor itself, an advantage for which they have not bargained.

The assumption that the injunction is necessary for the effectuation of a plan is entirely unsupported. No necessity has been shown.

On the contrary, the power to sell collateral, instead of tending to prevent the consummation of a plan, will in practice expedite it.

V

The present injunction purports to be a final disposition of the issue until a plan of reorganization under Section 77 can be effected. As a matter of fact, there is no plan proposed by any of the interested parties. Unless this Court now affords the relief to which this petitioner is entitled, the latter can have no assurance that it will not suffer irreparable injury.

ARGUMENT

Preliminary Statement

At the outset, it should be pointed out that unlike the cases in which certiorari has been granted to the banks, this case requires consideration by this Court of the acts relating to the creation by the Congress of the Reconstruction Finance Corporation and the statutory powers expressly granted to it (in particular, c. 8, 47 Stat. 5, and c. 520, 47 Stat. 709). These acts were not considered by the Circuit Court of Appeals in its opinion.

The position of the Reconstruction Finance Corporation also differs from the position of the banks because the Reconstruction Finance Corporation has not raised any constitutional issues whatever. The issues in this case may be delimited by bearing in mind that there is no room herein for the application of any broad principles of constitutional interpretation. So far as the pertinent legal questions are concerned, the instant case involves only the ordinary canons of statutory construction and the giving effect thereto.

I.

THE PETITION UPON WHICH THE ORDER UNDER REVIEW WAS ENTERED IS INSUFFICIENT.

The Circuit Court of Appeals below assumed that prior to the enactment of Section 77 the order could not have been entered except in a plenary proceeding. This is not such a proceeding.

The rule of law in question has not been changed by the enactment of Section 77 of the Bankruptcy Act. We shall develop this contention in point II of this brief. It is sufficient to note here that the debtor has gratuitously assumed that an order issuable only in a plenary proceeding, prior to Section 77, could issue in a summary proceeding after the enactment of that section; and the Circuit Court of Appeals below, without argument in its opinion, so assumed, and explicitly declined either to review the authorities or to justify its assumption by reasoning.

Yet the change is almost as drastic as well could be imagined. A vital right of a creditor could, on

this theory, be cut off even without formal notice to him of the complaint set forth in a pleading; without adequate consideration of the facts or the equities; without opportunity, in case he does not receive notice by mail to present his side, and, apparently, without even a chance to insist upon the safeguard of a bond to protect him against loss should he choose to appeal.

It becomes necessary, therefore, to analyze the opinion of the court below.

A. *Analysis of the opinion of the Circuit Court of Appeals.*

The extent to which the decision of the Circuit Court of Appeals extends the power of the District Court, contrary to long-established practice in ordinary bankruptcy, appears from a brief analysis of the decision of the Circuit Court of Appeals.

The rationale of the decision of the Circuit Court of Appeals appears in the following quotation (R. 324):

> Our conclusion is that the restraining order is an exercise of authority on the part of the court which is necessary to the effective use of the powers expressly conferred by Congress through this amendment. In short, it was the exercise of a power which was incident to those expressly conveyed by Congress to the court.

It was assumed by the court that, due to obvious jurisdictional objections, the order under review, having been entered in a summary proceeding could

not have been sustained as to the nonresidents enjoined "save as the amendment known as Section 77 of the Bankruptcy Act supplies the authority therefor" (R. 320), citing *Bardes* v. *Hawarden Bank*, 178 U. S. 524, 527; *Taubel-Scott-Kitzmiller Co., Inc.* v. *Fox*, 264 U. S. 426, 432.[2] As appears from the following quotation, the court did not discuss the contention made by the Reconstruction Finance Corporation that, prior to the enactment of Section 77, the order could not have been sustained against any of the petitioners (R. 320, 321):

> That the order may have been sustained under the Bankruptcy Act, before amendment under certain circumstances and as against creditors who occupy positions similar to some of the appellants, is earnestly asserted. We are, however, for brevity's sake avoiding a discussion of such questions because unnecessary.

See also the following:

> May the restraining order be issued in a summary proceeding? Again, we look to the 1933 amendment to find authority for the court to so proceed. (R. 323.)

Thus, for the foundation of the court's affirmance, reliance is made solely upon the 1933 amendment to the Bankruptcy Act. As will be set forth more fully under point II of this brief, Section 77 does not

[2] There would appear to be nothing in the doctrine of *Isaacs* v. *Hobbs Tie & Timber Co.*, 282 U. S. 734, which authorizes a bankruptcy court, lacking possession, to stay the sale of collateral. See also, *Straton* v. *New*, 283 U. S. 318.

contain any specific authority for a District Court to enjoin a pledgee from selling mortgage bonds validly issued by a debtor railroad or its subsidiaries and pledged to secure its debt, when such sale is authorized by the pledge agreement and does not require judicial proceedings. On the contrary, the express provisions of Section 77 negative the implication that the court has such power.

In their brief in opposition to petitions for writs of certiorari (p. 10), respondents make the contention that we must look elsewhere, to subclause (15) of Section 2 of the Bankruptcy Act (the so-called omnibus clause) as it has existed since prior to the enactment of Section 77, to supply the missing authority for the order of the District Court. But here, again, express authority is lacking, for the language is only general.

It is indisputable, and the Circuit Court of Appeals admits the fact in its decision, that the order of the District Court is without express statutory authorization (R. 324).

B. *In a plenary proceeding the necessary allegations for the issuance of an injunction must be made out in the petition for the injunction, and omissions may not be supplied by a supporting affidavit.*

The record on which the injunction was issued consists solely of the debtor's petition (R. 37); an answer of one of the protective committees (R. 59); the affidavit of Dwight S. Beebe (R. 65); the special appearances of Reconstruction Finance Corporation

and the banks, and affidavits of nonresidence, filed in behalf of three of the banks (R. 68–75).

It is well settled that, in a plenary proceeding, where a petition is filed praying for the issuance of an injunction, the petition itself must state the facts which are urged as the basis for the injunction. Omissions in the petition may not be supplied by statements in a supporting affidavit.

In *Missouri Pacific R. R. Co.* v. *Norwood*, 283 U. S. 249, the railroad filed a complaint supported by certain affidavits praying for a temporary injunction to restrain certain officials of Arkansas from enforcing statutes of that state regulating freight-train crews. This Court affirmed a decision of the lower court dismissing the complaint because it was insufficient to show any ground for relief. This Court stated (p. 253):

> It [the plaintiff] maintains that the allegations of the complaint together with the facts set forth in the affidavits show that, when applied to operating conditions on its lines in Arkansas, these state laws are arbitrary and violative of the Federal Constitution and laws. But the affidavits filed in support of the application for a temporary injunction may not be considered in determining whether the complaint states facts sufficient to constitute ground for relief. *Leo* v. *Union Pac. Ry. Co.*, 17 Fed. 273. *United States* v. *Marine Engineers' Assn.*, 277 Fed. 830, 834; *McGregor* v. *Great Northern R. Co.*, 42 N. D. 269, 280; 172 N. W. 841.

To the same effect see *United States* v. *Marine Engineers' Ass'n*, 277 Fed. 830, 834, cited in the foregoing case; and *Leo* v. *Union Pacific Ry. Co.*, 17 Fed. 273. These cases are equity cases, but are applicable to the present case, since the ordinary equity procedure applies in bankruptcy proceedings. See General Order in Bankruptcy 37; *Bardes* v. *Hawarden Bank*, *supra*, at 535; *Fidelity Trust Company* v. *Gaskell*, 195 Fed. 865; and *In re Cunningham*, 40 F. (2d) 270, 271, where the court said:

> It is well settled that courts of bankruptcy are governed by the principles and rules of equity in their procedure, except where deviation is authorized by general order or by an act of Congress.

C. *In a plenary proceeding, the allegations of the debtor's petition would be insufficient to justify its issuance.*

The Reconstruction Finance Corporation submits the above proposition because the debtor's petition fails to allege:

(1) That the court has jurisdiction over the defendant;

(2) That the court has power to issue the order in a summary proceeding;

(3) That the debtor is unable to continue paying the interest due from time to time upon the collateral notes;

(4) That any of the obligations of subsidiary companies are guaranteed by the debtor;

(5) That any difficulties will be caused in handling the reorganization in case the pledged securities are sold;

(6) That any default has occurred which would entitle the pledgees to sell their collateral;

(7) That any of pledgees have threatened, or claim the right, to sell their collateral;

(8) That any plan of reorganization has been proposed which the sale of the collateral might obstruct or that it is impossible to draw a plan unless such sale is enjoined.

It should also be noted that the petition for the injunction is based on the following contentions: (a) that the value of the collateral securing each of the debtor's notes to the Reconstruction Finance Corporation was substantially in excess of the amount of the note; (b) that if the holders of said notes should convert or sell the collateral, "it *would cause a substantial and irreparable loss to the trust estate*"; (c) and that "in case of a forced sale of the said collateral at the present time, *it might result in a substantial deficiency judgment* against the Debtor herein, and would dilute the respective interests in the trust estate" of the holders of the debtor's bonds, of other creditors and of the debtor itself. We beg particularly to call to the attention of this Court that the contention of the debtor that a sale of the collateral "would cause a substantial and irreparable loss to the trust estate" is inconsistent with the contention that "it might result in a substantial deficiency judgment." (R. 40, 42, 43). (Italics supplied.)

D. *The omissions from the debtor's petition, moreover, are not remedied by any facts affirmatively alleged in the supporting affidavit of Dwight S. Beebe, and this is so, even if it may be considered as supplementing the petition.*

Assuming (as does the Circuit Court of Appeals) that, prior to the enactment of Section 77, the order could not have been entered except in a plenary proceeding, and further assuming (as we show later in this brief) that the law has not been changed by the enactment of Section 77, the injunction can not be supported by reference to the general record in this case. In order to show the nature and history of this proceeding, the various railroads which have intervened as parties, and the appointment of the trustees, parts of the record other than the petition and affidavit for the injunction have been included in the printed record filed with this Court; but the respondents may not supply defects in the petition for the injunction by reference to other pleadings included in the record. If we may correctly assume that, prior to the enactment of Section 77, the order could not have been entered in a plenary proceeding, and that the law has not been changed by the enactment of Section 77, the injunction, according to the rule laid down in the cases already cited, should be reversed if the allegations of the petition are insufficient to show its necessity.

But, should the rule which we contend is applicable to this case, be held not applicable, the omissions

from the debtor's petition are not remedied by any facts affirmatively alleged in the affidavit of Dwight S. Beebe (R. 37), on the basis of which and of the debtor's petition (R. 65) *only*, the injunction was entered, no issue of fact being raised or tried, and no evidence whatever being heard.

In a plenary proceeding which, we contend, is the only type of proceeding in which the right of the Reconstruction Finance Corporation to deal with the collateral according to the terms of the contract can be questioned, supporting affidavits are not properly part of the petition.

And even if it be held that an injunction could issue in a summary proceeding in a situation such as is here presented, the affidavit of Mr. Beebe is fatally defective for the following reasons:

(1) The reference in the affidavit to the "necessity" for the injunction in order to carry out the purposes of Section 77 (R. 68) is not an *allegation of fact*. It is merely alleged that "the contentions of the committee", which Mr. Beebe represents, are to this effect. Even if the allegation in this form had appeared in the petition itself, it would not be admitted by failure to deny in the lower court, since only properly pleaded *facts* are admitted, not statements of "contentions" of parties on points of law. *Missouri Pacific R. R. Co.* v. *Norwood*, *supra*.

(2) Neither is the reference in the affidavit to $145,749,050 face amount of bonds and *stock* of "the Debtor's system" pledged with the trustees of three of the debtor's mortgages an allegation of *fact*.

It is merely alleged on "information and belief" that "in certain events" (not enumerated) "described in the indentures under which the aforesaid trustees are acting, such trustees are given the right to sell such collateral." The affidavit states (R. 67): "On behalf of the Committee, I request permission to submit to the court upon the hearing of the debtor's application copies of any one or more of such indentures." This suggestion was never followed up, and no indentures were ever submitted to the court.

The affidavit continues (R. 67):

> On behalf of the Committee, I wish to point out that a decision holding that the Reconstruction Finance Corporation and the Banks should not be enjoined from selling the $54,710,000 face amount of collateral held by them *would also determine that the Trustees of the three Bond issues mentioned above had the right to sell*, in accordance with the terms of the above-mentioned Indentures, the $145,749,050 total face amount of capital obligations of the System pledged with them. (Italics supplied.)

Not only is this statement not an allegation properly before the court; it is also a perfectly indefensible conclusion.

It is clear that the affirmance or reversal of the present injunction will not operate as a precedent for the sale of any collateral held by the trustees under these indentures. The type of collateral held by the trustees (consisting, to a substantial extent, of stock) (R. 66) and that held under the terms of the pledge are totally different; the loans secured under the trust agreement are long-term loans, not short-term loans

made in reliance on the right to a quick conversion of the security.

E. *Regardless of the sufficiency of the petition, it should be noted there was no service of process on Reconstruction Finance Corporation.*

The record shows (R. 56) that the Reconstruction Finance Corporation was never served with process of any kind. The Reconstruction Finance Corporation, by the stipulation entered into in open court (R. 119) has not in any way, by presenting arguments or filing briefs on the merits, waived its objection to the failure to obtain personal service upon it. Since this question will be fully discussed in the brief submitted to this Court on behalf of the nonresident banks, it is submitted to this Court by the Reconstruction Finance Corporation without further argument.

II

THE DISTRICT COURT MAY NOT RESTRAIN A PLEDGEE FROM SELLING PLEDGED COLLATERAL UNDER ANY PROVISION OF THE BANKRUPTCY ACT HERE APPLICABLE

A. *The law as it existed prior to the enactment of Section 77*

Sections 57 (h) and 67 (d) (Appendix, pp. 85, 86) expressly provide for the protection of liens. Construing these provisions, the courts have uniformly held that bankruptcy of the pledgor does not deprive the pledgee of any rights secured to him under his contract. *Hiscock* v. *Varick Bank of New York*, 206 U. S. 20; *Jerome* v. *McCarter*, 94 U. S. 734;

Taney v. *Penn Bank*, 232 U. S. 174; *In re Hudson River Navigation Corporation*, 57 F. (2d) 175; *In re Browne*, 104 Fed. 762. An order of the Bankruptcy Court restraining the sale of collateral may issue only where the circumstances of the case come within the provisions of Sections 60 (b), 67 (e) or 70 (e) of the Bankruptcy Act (Appendix, pp. 85, 86, 87), none of which are applicable to this case.

The decisions dealing with the matter may be appropriately classified into three groups, based upon the three different factual situations most often presented.

(i) Where the pledged collateral consists of obligations of a corporation other than the insolvent debtor (*as does all of the collateral held by the Reconstruction Finance Corporation in this case*, except $7,575,000 of the debtor's first and refunding bonds), the sale of the collateral may not be enjoined.

In re Hudson River Navigation Corporation, 57 F. (2d) 175, 175–176;
Hiscock v. *Varick Bank of New York*, 206 U. S. 28, 41;
In re Mertens, 144 Fed. 818;
In re Browne, 104 Fed. 762;
In re Mayer, 157 Fed. 836.

(ii) Even where the pledged collateral consists of *secured* treasury obligations of the insolvent debtor itself (such as the $7,575,000 of the debtor's first and refunding bonds pledged with the Reconstruction Finance Corporation) the sale of such collateral may not be enjoined.

Jerome v. *McCarter*, 94 U. S. 734, 739;

Guaranty Trust Co. of New York v. *Galveston City Railroad Company*, 87 Fed. 813, 815;

In re Ironclad Manufacturing Company, 192 Fed. 318; also same case, 190 Fed. 320;

Turner v. *Metropolitan Trust Company*, 207 Fed. 495, 499–500;

Rogers Brown & Co. v. *Tindel Morris Co.*, 271 Fed. 475, 476–477;

Apparently contra:

Mississippi Valley Trust Co. v. *Railway Steel Spring Co.*, 258 Fed. 346, 351.

(iii) Where the pledged collateral consists of *unsecured* treasury obligations of the insolvent debtor itself (neither the Reconstruction Finance Corporation nor the banks in this case hold any pledged obligations of this sort), it has been held that the court may enjoin the sale of such obligations on the theory that the collateral consists merely of a multiplication of the number of promises to pay the same debt.

John Matthews, Inc. v. *Knickerbocker Trust Co.*, 192 Fed. 557.

We will discuss these groups of cases in the order numbered.

(i) Where the pledged collateral consists of obligations of a corporation other than the insolvent debtor (*as does all of the collateral held by the Reconstruction Finance Corporation in this case*, except $7,575,000 of the debtor's first and refunding bonds) the sale of the collateral may not be enjoined.

For many years it has been well settled that pledgees holding in their possession collateral, consisting of obligations of a corporation other than that of the debtor, have the unrestricted right to sell the collateral when they choose, in spite of the bankruptcy of the pledgor. In this respect, the rule in equity receiverships is the same as the rule in ordinary bankruptcy. The reasons for its adoption are compelling, particularly when, as in this case, the vital and substantial part of the short-term creditor's contract is his right upon default to choose the time to liquidate his loan by a sale of the pledged collateral. These reasons are well stated in the recent opinion of the Circuit Court of Appeals of the Second Circuit in *In re Hudson Navigation Corporation*, 57 F. (2d) 175, where Judge Learned Hand said:

> For practical purposes the pledgee has therefore immediate dominion as between the two, and with it goes the power to resist any action by the bankruptcy court, which ust be founded on the fact that the bankrupt had such dominion, when the petition was filed. This was implicit in our ruling in *In re Mertens*, 144 F. 818, and we directly held so in *In re Mayer*, 157 F. 836; since when it has been generally understood that *bankruptcy does not touch the power of a pledgee of shares of stock to close out his collateral. Nothing would be more disturbing to transactions of the kind than a doubt thrown upon that ruling. Millions of dollars are daily lent upon like collateral, which fluctuates from hour to hour; unless the pledgee*

> *is free to choose his time to sell, his security may disappear.* The same is not, indeed true of shares like those at bar, or of notes, neither of which vary rapidly in value; but the same legal reasons exist as to them also. The pledgee, having taken possession of the documents, supposes himself for just that reason to be the sole judge of his necessities, and lends on that understanding. So long as he keeps within the terms of the agreement, he need not concern himself with the pledgor's fate, or that of his creditors, who must stand in his shoes. (Italics supplied.)

In the above case, a trustee in bankruptcy sought to enjoin a holder of collateralized notes of a bankrupt from selling collateral held by him, consisting of notes and stock of another company. The trustee did not allege that the pledge was invalid or that the pledgee was not proceeding in accordance with the agreement, but alleged that "a sale at that time would result in great sacrifice of collateral, which was amply sufficient to protect the loans; that some of the securities were essential to the conduct of the business; and that a reorganization was in contemplation at which all its property would be sold." The Circuit Court of Appeals affirmed the order denying the injunction.

To the same effect are the cases of *In re Mertens*, 144 Fed. 818, and *In re Mayer*, 157 Fed. 836, decided by the same court. These decisions are in accord with the rule followed in *Hiscock* v. *Varick Bank of New York*, 206 U. S. 28. In that case this Court reviewed the order of a referee in bankruptcy disal-

lowing a claim filed by a secured creditor who had sold his collateral consisting of insurance policies. The referee had ruled that the sale held without any court order was void and refused to allow the claim. This Court in affirming the order of the Circuit Court of Appeals reversing the order of the District Court, which in effect had sustained the referee's order, said (page 41):

> When the petition in the present case was filed the bank had a valid lien upon these policies for the payment of its debt. The contracts under which they were pledged were valid and enforceable under the laws of New York where the debt was incurred and the lien created. The bankruptcy act did not attempt by any of its provisions to deprive a lienor of any remedy which the law of the State vested him with; on the other hand, it provided, Sec. 67 (d): "Liens given or accepted in good faith and not in contemplation of or in fraud upon this act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall not be affected by this act."

Hiscock v. *Varick Bank of New York, supra,* is authority for the proposition that under Section 57(h) of the Bankruptcy Act a secured creditor has an absolute right to exercise the power of sale contained in the contract of pledge, and may not be compelled by the Bankruptcy Court to resort to the alternative provision for an appraisal contained in Section 57 (h).

In the case of *In re Browne,* 104 Fed. 762, receivers in bankruptcy sought an injunction restrain-

ing creditors holding promissory notes secured by the pledge of wool from selling the wool. The court in denying the petition of the receivers said (page 762):

> I do not pass upon the question, whether the court may interfere to prevent a fraudulent or oppressive exercise of such a right. No such exercise is threatened in the present case. It is agreed that the creditors intend to deal fairly with the property pledged, and will make an honest effort to sell for the best prices that can be obtained. *This being so, I am of opinion that the bankrupt act gives the court no authority to intervene between these creditors and their exercise of the right to sell given by the collateral notes.* * * * (Italics supplied.)

(ii) Even where the pledged collateral consists of *secured* treasury obligations of the insolvent debtor itself (such as the $7,575,000 of the debtor's first and refunding bonds pledged with the Reconstruction Finance Corporation), the sale of such collateral may not be enjoined.

It is almost uniformly held that a court of bankruptcy has no more power to enjoin the sale of secured obligations of a debtor in the possession of a pledgee than it possesses in the case of obligations of corporations other than the debtor.

In *Jerome* v. *McCarter*, 94 U. S. 734, 739, which has never been questioned, limited, or criticized by any later decision, this Court said with regard to the right of a pledgee to sell secured obligations of the pledgor:

There is some proof that, when the company became bankrupt (Aug. 28, 1872), some of the bonds were held as collaterals for loans made to the company smaller in amount than the bonds pledged. But the bonds were subsequently sold by the pledgees, and the present holders hold them by absolute right. The position that the pledgees could not sell the pledge after the adjudication in bankruptcy, is quite untenable. It is sustained by nothing in the Bankrupt Act. The bonds were negotiable instruments. They passed by delivery, and even were there no expressed stipulation in the contracts of pledge, that the pledgee might sell on default of the pledgor, such a right is presumable from the nature of the transaction. *Certainly the Bankrupt Act has taken away no right from a pledgee secured to him by his contract.*

In regard to the bonds covered by the McCarter mortgage, which is the one now in suit, we find no error in the decree of which the appellants can complain. Most of those bonds, though at first issued as collateral for loans made to the mortgagors, have been sold, and they are now owned by the purchasers. There are some, it is true, that are still held in pledge; but the pledgees have a clear right to use them, either by sale or by collection, until the full amount of the debts due from the mortgagors is satisfied. * * * (Italics supplied.)

In *Guaranty Trust Company of New York* v. *Galveston City Railway Company*, 87 Fed. 813, it appeared that the railway company had borrowed

$50,000 from the bank, executing its demand note therefor and depositing as collateral security $75,000 face amount of its own 6% second-mortgage bonds. The note provided for sale by the pledgee without notice, at public or private sale, the pledgee having the right to purchase the bonds at such sale. After notice and demand for payment, the railway company filed a petition to restrain the bank from selling the bonds. The petition was filed in a foreclosure and receivership proceeding involving a prior issue of mortgage bonds. The railway alleged irreparable injury should the bank sell the secured collateral held by it. The Circuit Court of Appeals reversed the order granting the injunction and remanded the cause with instructions to dismiss the petition. The court, referring to the secured collateral, said (p. 815):

> They are evidence of debt, not assets of the appellee. They have never been assets of the Galveston City Railroad Company. The right of appellant to sell the bonds pledged under the terms of the contract, and the powers confirmed by the terms of the pledge, were not in any way affected by the appointment of a receiver; nor were the position, character, or rights of the parties modified by the allegation that the appellants were the holders of the majority of the first-mortgage bonds. The bonds may change hands; the trustee may be changed for cause; *the receivership may extend for years. When, it might be asked, shall the appellant be permitted to realize on its collateral?* (Italics supplied.)

In re Ironclad Manufacturing Company, 192 Fed. 318, squarely upholds the right of a pledgee of secured collateral of the debtor to realize upon the same by a sale after bankruptcy. The facts in this case were that the bankrupt, Ironclad Manufacturing Company, prior to bankruptcy, borrowed various sums of money upon its own mortgage bonds as collateral. A petition was filed with the District Court to restrain the sale, after bankruptcy, of these secured bonds by the creditors holding them. Both the District Court and the Circuit Court of Appeals decided that the injunction could not issue upon authority of *Jerome* v. *McCarter, supra*. Upon a petition for a stay pending the appeal, Ward, Circuit Judge, stated that if he had the power to grant the stay he would nevertheless deny it "because in the absence of fraud the court has no right to interfere with the exercise of their legal rights as to collateral by pledgees." *In re Ironclad Manufacturing Company, supra*, at 319.

The next case involving this question was *Turner* v. *Metropolitan Trust Company*, 207 Fed. 495. To secure its $600,000 note to a creditor on account of money borrowed, the Western Steel Corporation, bankrupt, had pledged its own mortgage bonds in the amount of $2,000,000. After default in payment of the note the creditor sold the bonds at a private sale and purchased them itself for $25,000. It was held that the creditor was entitled to prove his claim in the bankruptcy proceeding for the amount of the unpaid balance on the $600,000 note and also to prove

$2,000,000 face amount of bonds against the bankrupt estate. The court said (pp. 499–500):

> The attempt to make a distinction between the rule which governs contracts of pledge, where the pledgor prefers to pledge its own mortgage bonds as collateral, and that which governs such contracts, where the pledgor pledges the bonds of another corporation, is not well founded. The contract measures the rights of the parties; and where the expressed intention is that in case of foreclosure the bonds deposited may be sold as existing securities, and the pledgee is given the right to become the purchaser, why should there be any less good title conveyed to such purchaser than if he were selling the bonds of another corporation? The reason for permitting the pledgee to become a purchaser is to permit him to buy the bonds, if he should wish to do so, at a price higher than any one else will pay for them.

The purchaser of the collateral in this case was the pledgee himself. No point was made in the case that the pledged bonds were sold prior to the filing of the petition in bankruptcy. The case is authority that the pledge by a corporation of its own secured obligations stands on exactly the same footing as a pledge of secured obligations of some other obligor.

In *Rogers Brown & Co.* v. *Tindel Morris Co.*, 271 Fed. 475, the court considering a similar question, denied a motion for an injunction to restrain the creditor from selling mortgage bonds of the defendant held as collateral. The court said (pp. 476–477):

(1) The answer to the question involved in this motion is thus seen to be dependent upon the answer to the other question of whether a debtor may pledge one promise to pay as collateral for another, thereby putting it within the asserted possible power of the creditor to double the indebtedness. In its concrete form, applied to the facts of this case, the question is: May a debtor pledge his own mortgage bond as collateral for his debt? The question has been authoritatively answered in the affirmative. *Turner* v. *Metropolitan Trust Co.*, 207 Fed. 495, 125 C. C. A. 157. Having the right to receive and hold such a pledge, with the power to sell, the right to exercise the power follows. *Jerome* v. *McCarter*, 94 U. S. 734, 24 L. Ed. 136.

(2) The argument that, because the mortgaged premises are in the hands of the court, the bonds cannot be sold, does not meet the point. The principle is wholly different. No court would permit its possession and control of property under its care to be disturbed; but, although the court has possession of the mortgaged premises, it has not of the bonds. The control pivots on the possession.

Only one case, *Mississippi Valley Trust Co.* v. *Railway Steel Spring Co.*, 258 Fed. 346, so far as we can ascertain, is authority against the rule applied in the foregoing cases. This was an equity proceeding in which the court affirmed an order restraining the pledgee from selling bonds of the defendant pledged as collateral for a loan. The court said (p. 351):

The validity of the transaction by which the trust company became the holder of the

> bonds in question as security for the note which it held of the railway company, and the status of the trust company as such holder, are to be determined by the local law, that is, of the state of Missouri, inasmuch as the transaction was a Missouri transaction (citing cases).

Under the law of Missouri as expounded in *Dibert* v. *D'Arcy*, 248 Mo. 617, unissued bonds, such as were involved in the *Mississippi Valley Trust Co.* case, were held not to have been put into circulation and not to constitute a personal liability of the corporation. Their only effect, under the Missouri law, was that the pledgee became the holder of them for the purpose of enforcing his lien. Under Missouri law, then, the bonds were not the personal obligations of the debtor in the hands of the pledgee, but might become so if negotiated to a bona fide holder.

If the issue in this case is to depend on local law, then, as to this petitioner, the law of the State of New York will govern because, as shown by Exhibit A to the debtor's petition for the injunction (R. 45), the notes of petitioner were made and are payable in the State of New York. The *Ironclad Manufacturing Co.* case, *supra*, leaves no doubt that the Missouri rule does not prevail in New York.

The overwhelming weight of authority, as seen, is contrary to the rule announced in the *Mississippi Valley Trust Co.* case.

(iii) Where the pledged collateral consists of *unsecured* treasury obligations of the insolvent debtor

itself (neither the Reconstruction Finance Corporation nor the banks in this case hold any pledged obligations of this sort), it has been held that the Court may enjoin the sale of such obligations on the theory that the collateral consists merely of a multiplication of the number of promises to pay the same debt.

The leading case in favor of the above proposition is *John Matthews, Inc.*, v. *Knickerbocker Trust Co.*, 192 Fed. 557. The decision indicates clearly that the Circuit Court of Appeals would have decided the case differently, had the collateral been *secured* obligations of the same debtor.

This would appear from the following extract from the court's opinion (p. 558):

> The debenture bonds of the bankrupt corporation which the petitioner holds as collateral do not purport to impose any lien or charge upon the property of the corporation and are nothing more than instruments importing an obligation to pay. * * * The real debt which the bankrupt corporation owed the petitioner was evidenced by the note, and nothing more was added to it by giving as collateral another promise to pay. Any rule which would permit the proof of two notes for one indebtedness would permit the proof of a dozen, and would substitute for pro rata distribution among real creditors, distribution in accordance with the ability of a bankrupt to make manifold obligations for single debts.

The rule here laid down has no application to this case, since none of the collateral held by the Recon-

struction Finance Corporation or the banks consists of *unsecured* treasury obligations of the debtor.[3]

It is clear that, apart from Section 77, where the pledged collateral consists of secured obligations of the debtor or of corporations other than the debtor, validly

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[3] Other cases involving *unsecured* treasury obligations of the same debtor have gone on the theory that such unsecured obligations do not in institutional practice constitute "collateral." See *Shoemaker* v. *Nat. Mechanics Bank.*, 21 Fed. Cas. No. 12801, 1331, 1334, where the following statement is made: "* * * collateral security in bank phraseology means some security additional to the personal obligation of the borrower." Such would seem to be the general understanding and the meaning of the term. See 2 Words and Phrases (First Series) pp. 1252, 1253. See also *In re Waddell-Entz Co.*, 67 Conn. 324, 335, where it is stated: "A debtor's additional promises to pay [unsecured notes] cannot, from the very nature of the case, be treated as collateral security for his debt, unless such additional promises are themselves secured by a lien on property or by the obligations of third persons; under such circumstances they may be treated as collateral security so far as is necessary to obtain the benefit of the lien or obligation. This self-evident proposition has rarely been discussed in reported cases. The principle, however, has been clearly stated by the courts of New York and Massachusetts. *People* v. *Remington*, 54 Hun, 480, affirmed, 121 N. Y. 675; *Third Nat. Bank* v. *Eastern R. R. Co.*, 122 Mass. 240; * * *

"* * * Whether or not they [unsecured notes] might constitute a debt for their face value in the hands of a third party * * * would depend upon the circumstances of such purchase. Their standing, in such case, as a debt against the insolvent estate, would not depend on their sale as 'collateral security,' but on their valid assignment to an innocent third party." (Words in brackets supplied.)

To the same effect see *Jones* v. *Third Nat. Bank*, 13 F. (2d) 86; *Union Nat. Bank* v. *People's Savings & Trust Co.*, 28 F. (2d) 326.

pledged and in the possession of the pledgee, a bankruptcy court, under any provision of the Bankruptcy Act here applicable, may not restrain the latter from selling the same, pursuant to the terms of the pledge contract, whether or not the sale requires judicial proceedings.

B. *The well-settled law in these respects has not been changed by the enactment of Section 77*

(i) The ordinary canons of statutory construction, when applied to the express provisions of Section 77, refute the implication of an intent to change the established rules of law

The 1933 amendments to the Bankruptcy Act contain no express provisions abrogating the rule of law in ordinary bankruptcy proceedings. If such power exists, then, it must be because it can be implied. But it is a well-established canon of statutory construction that an amendment by implication can occur only where the terms of the later statute are so repugnant to an earlier statute that they cannot stand together. This elementary canon of statutory construction is applicable to the construction of Section 77, particularly in view the language of subdivision (n) thereof, which reads as follows:

> In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and his property, shall be the same as if a voluntary petition for adjudication had

> been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed.

The Circuit Court of Appeals affirmed the order of the lower court on the ground that the power to issue the injunctional order under review could be implied as an incident to other powers expressly conferred by Section 77 (R. 32[illegible]).

The issuance of an injunction such as the one under review in this case is an extreme and unprecedented invasion of the rights of creditors holding collateral. It is, indeed, difficult to believe that the Congress would not have *expressly* conferred upon the court the power to issue such an injunction had it been the intent of the Congress to grant the power.

The only provision in Section 77 relative to injunctions is contained in subdivision (1) of Section 77, reading as follows:

> (1) In addition to the provisions of section 11 of this Act for the staying of pending suits against the debtor, such suits shall be further stayed until after final decree [and] the judge may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree.[4]

There is no other provision of Section 77 which in any way confers upon the court the power to enjoin a secured creditor such as the Reconstruction Finance

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[4] The word in brackets was apparently omitted from the statute by inadvertence, since otherwise the sentence construction is defective.

Corporation from selling pledged securities pursuant to the terms of the pledge contract, where judicial proceedings are not required. To say that the power to issue such an injunction may be implied as an "incident" to powers expressly conferred by Section 77 is judicial legislation.

It is to be noted that subdivision (1) of Section 77, above set forth, grants power only to stay a *judicial proceeding* to enforce a lien.[5]

Under the well-established canon of statutory construction. *"Expresio unius est exclusio alterius"*, applied to the jurisdiction of courts in *In re Heath*, 144 U. S. 92, 93, where this Court said: "* * * that the affirmative description of the cases in which the jurisdiction may be exercised implies a negative on the exercise of such power in other cases * * *", the power in the court to enjoin secured creditors from enforcing against collateral the terms of the pledge agreement is clearly negatived by the statute.

The general rule applicable is stated as follows by Ruling Case Law (25 R. C. L. 981, section 229):

> It is a general principle of interpretation that the mention of one thing implies the exclusion of another thing; *expressio unius est exclusio*

[5] It is suggested that in using the words "judicial proceedings" in subdivision (l) of Section 77, Congress may have had in mind a narrow purpose, viz., to authorize a Federal bankruptcy court to enjoin the foreclosure in State courts of "liens upon the estate" of the debtor. Without subdivision (l) or similar express authority the injunction of certain State proceedings by the Federal court would be prohibited by Sec. 265 of the Judicial Code, 28 U. S. C. A., Sec. 379.

alterius. The affirmative description of the cases in which the jurisdiction may be exercised implies a negative on the exercise of such power in other cases.

Had the Congress intended that enforcement of the terms of the pledge agreement against collateral might be enjoined in cases where judicial proceedings were not necessary to aid in such enforcement, it would have been a simple matter to add to subdivision (1) a provision expressly so providing. The significant thing is that the Congress did not do so.

(ii) The construction adopted by the Circuit Court of Appeals does not give effect to the express words of Section 77.

The construction adopted by the Circuit Court of Appeals gives no effect to the words "commencement or continuance of any judicial proceeding" contained in subdivision (1) of Section 77. The court construes Section 77 *exactly as if these words were omitted* and as if the Act provided that the court might enjoin the "enforcement of any lien upon the trust estate."

In accordance with the accepted rule of statutory construction that effect must be given to the express words of a statute, the words "commencement or continuance of any judicial proceeding" must constitute a limitation on the power of the court to enjoin the enforcement of liens.

From the wording used it would appear that, in drafting subdivision (1), the Congress was providing for injunctions to prevent the enforcement of liens upon the trust estate. In providing that "the

commencement or continuance of any judicial proceeding" might be enjoined the Congress clearly marked off the limits of the power.

(iii) Subdivision (1) of section 77, furthermore, is applicable only to judicial proceedings to enforce "any lien." A pledgee of negotiable securities has a greater interest therein than a mere "lien."

Subsection (1) of Section 77 gives the bankruptcy court power to enjoin "any judicial proceeding to enforce *any lien upon the estate*". Even if the argument that subsection (1) only gives power to enjoin "*judicial*" proceedings should fail, there is a serious question whether the interest or claim of the Reconstruction Finance Corporation to the collateral securities held by it can be said to be merely a "*lien.*" The bonds held by the Reconstruction Finance Corporation, being corporate railroad obligations, are undoubtedly negotiable instruments payable to bearer, and, upon their transfer to this petitioner, title thereto would, under the provisions of the Uniform Negotiable Instruments Law, become vested in Reconstruction Finance Corporation even though the transfer was made to it as pledgee. As between the Reconstruction Finance Corporation and the debtor, complete title might be said, under the authorities, not to have passed to the Reconstruction Finance Corporation, yet under many authorities a special title or property, which enjoys a legal status paramount to that of a mere lien, has vested in the Reconstruction Finance Corporation.

The Reconstruction Finance Corporation believes that the "*lien*" referred to in the Act is a lien created by contract upon tangible properties in the possession of the debtor, actual or constructive, at the commencement of the proceeding, and that the term was not intended to apply to choses in action, such as the bonds in the present case, which had previously been delivered in pledge. Furthermore, if the title to the pledged securities can be said to have vested in the Reconstruction Finance Corporation at the time of the transfer of the same to them, it may well be questioned whether such securities constitute "the estate" of the debtor within the meaning of Section 77. An informative discussion upon these questions appears in the opinion of the Circuit Court of Appeals in *In re Hudson River Nav. Corporation*, 57 F. (2d) 175, where Judge Learned Hand said (p. 175):

> The case presents a difficulty we have before discussed (*In re Roman* (C.C.A.) 23 F. (2d) 556; *In re Borok* (C. C. A.) 50 F. (2d) 75); that of applying to choses in action notions drawn from the law of chattels, more particularly of deciding whom we shall say to be in "possession" of such property. As to both notes (section 79 Negotiable Instruments Law [Consol. Laws N. Y. C. 38]), and shares (section 162 (b), Personal Property Law [Consol. Laws N. Y. c. 41]), delivery of the documents under a written assignment transfers "title", when the transfer is absolute; and by "title", we understand that the assignee becomes the obligee. Though these transfers were in

> pledge, it would seem that *pro tanto* the sections might convey to the pledgee his "special property," whatever that may be, though so far as we can find the case has not arisen. But as the question does not turn upon "title" but "possession," the difficulty still remains. It seems to us unnecessary to refine too far; in substance, entire control over the obligation passes to the pledgee, who certainly gets possession of the documents, without which, so long as the pledgee acts in accord with the agreement, the pledgor cannot assert any rights as obligee. For practical purposes the pledgee has therefore immediate dominion as between the two, and with it goes the power to resist any action by the bankruptcy court, which must be founded on the fact that the bankrupt had such dominion, when the petition was filed. This was implicit in our ruling in *In re Mertens*, 144 F. 818, and we directly held so in *In re Mayer*, 157 F. 836.

In *National Bank* v. *American Brewing Co.*, 257 Pac. (Mont.) 1043, the court said at page 1046:

> The transfer before maturity of a negotiable promissory note in pledge vests an absolute title in the pledgee, irrevocable except upon the payment of the principal indebtedness. *Yellowstone National Bank* v. *Gagnon*, 19 Mont. 402, 48 P. 762, 44 L. R. A. 243, 61 Am. St. Rep. 520; *First National Bank of Lewistown* v. *Wilson*, 57 Mont. 384, 188 P. 371; *French & Co.* v. *Haltenhoff*, 73 Or. 249, 144 P. 480.

In *Winnemucca State Bank & Trust Co.* v. *Corbeil*, 178 Pac. (Nev.) 23, the court said at page 25:

> And the plaintiff, by taking the note expressly as a collateral security, undertook to account to the insurance company for the property assigned. It became the holder of the legal title under an express trust to hold the beneficial interest or the money collected primarily for itself, and secondarily for the indorser.

That the pledgee receives either absolute title or a special title or interest which is more than a mere lien is also shown by the following decisions:

Thomson v. *Findlater Hardware Co.*, 156 S. W. (Tex.) 301;

Leonard v. *Taylor*, 39 S. W. (2d) (Ark.) 704;

Fox v. *Harrison National Bank*, 50 Pac. (Kan.) 458;

American National Bank v. *Tarpley*, 250 Pac. (N. Mex.) 18;

Dickey v. *Pocomoke City National Bank*, 43 Atl. (Md.) 33;

Dulin v. *National City Bank*, 130 N. E. (Ind.) 426;

Goodman v. *Simonds*, 20 How. 343;

N. Y. Marbled Iron Works v. *Smith*, 4 Duer (N. Y.) 362;

Murray v. *Lardner*, 2 Wall. 110;

Railroad Co. v. *National Bank*, 102 U. S. 14.

In *In re Parmenter*, 70 F. (2d) 929, the court said at page 936:

> So far as we know it has always been held that a bankrputcy court has no jurisdiction whatever over pledged security which has been transferred in good faith by a debtor to his creditor more than four months prior to the filing of the bankruptcy petition. . .

See also the following recent cases arising under Section 74 or 75 of the Bankruptcy Act: *In re Hillmert* (C. C. A. 7th, 1934), 71 F. (2d) 411; *Molina v. Murphy* (C. C. A. 1st, 1934), 71 F. (2d) 605; *In re Smith* (E. D. Ill., 1934), 7 F. Supp. 863, 864.

(iv) Section 74, enacted as part of the same Act containing section 77, has been construed not to authorize a bankruptcy court to enjoin the sale of pledged collateral.

Chapter VIII of the Acts of Congress relating to Bankruptcy (47 Stat. 1467; 11 U. S. C. A. Sections 201–205) was enacted as one Act pursuant to a general policy of Congress. While Section 77 of this Act deals with railroads, Section 74 applies to persons other than corporations.

A provision somewhat similar to subdivision (1) of Section 77 is found in subdivision (n) of Section 74. Subdivision (n) of Section 74 has been construed by Judge William Bondy of the District Court for the Southern District of New York in *In re Doelger*. In this case, on a motion made by the holder of a collateralized note for an order vacating an injunction, insofar as it enjoined the sale of the collateral security, the court in an unreported decision handed down on

May 13, 1933 (9 American Bankruptcy Rev. 329, June 1933), said:

> This motion is made in a proceeding brought under section 74 of the Bankruptcy Act, enacted March 3, 1933, and entitled "Provisions for the Relief of Debtors", to obtain an extension of time for payment of the debts of petitioner. The question presented is whether the new act affects the creditor's freedom of recourse to the security pledged, and particularly whether the court is authorized to enjoin a sale of such security.
>
> Subdivision (h) of section 74 (11 U. S. C. A., sec. 202) provides: "The terms of an extension proposal may extend the time of payment of either or both unsecured debts and secured debts the security for which is in the actual or constructive possession of the debtor or of the custodian or receiver. * * *" Subdivision (n) provides: "In addition to the provisions of section 11 of this act for the staying of pending suits, the court, on such notice and on such terms, if any, as it deems fair and equitable, may enjoin secured creditors who may be affected by the extension proposal from proceeding in any court for the enforcement of their claims until the extension has been confirmed or denied by the court."
>
> Under these express provisions it seems clear that the court's power to enjoin is restricted to court proceedings; and that an extension may be obtained only of secured debts the security for which is in the actual or constructive possession of the debtor, a custodian, or receiver. Neither of these conditions is applicable to the creditor here involved.

See, to the same effect, the decision of a referee in bankruptcy in *In the Matter of H. F. Chaiken*, (C. C. M. D. Pa.) 10 Am. Bky. Rev. 14, 16, Aug. 1933.

(v) The legislative history of Sections 74 and 77, passed at the same time, discloses that the Congress did not intend to grant to the courts any greater power to restrain sales of collateral than they previously possessed.

While there is no ambiguity in Section 77 on the questions here presented, it is well settled that, where ambiguity exists, committee reports and the statements on the floor of Congress in explanation of the Act by those in charge of its passage are admissible to show the intention of Congress.

In *United States* v. *Great Northern Ry.*, 287 U. S. 144, this Court held and said (pp. 154, 155):

> Thus far we have not traveled, in our search for the meaning of the law-makers, beyond the borders of the statute. In aid of the process of construction we are at liberty, if the meaning be uncertain, to have recourse to the legislative history of the measure and the statements by those in charge of it during its consideration by the Congress. *United States* v. *Missouri Pacific R. Co.*, 278 U. S. 269, 278.

See also *Duplex Co.* v. *Deering*, 254 U. S. 443, 474, 475.

Assuming (but not conceding) that there is ambiguity in Section 77 on the points at issue, the legislative history of certain subdivisions of Section 74 pointed out in the extract from the opinion in *In re*

Doelger, already quoted, leaves no doubt that the Congress was fully cognizant of the distinction between a secured creditor in possession of his security and one not in possession, and, that the final intent of the Congress was that the court's power under Section 74 to enjoin sales of collateral in a creditor's possession should be restricted to court proceedings.

Not only was Section 74 of the bill amended in the Senate to protect pledgees in possession of their security, as is pointed out in the dicision of Judge Bondy, but subdivision (n) of Section 77 guaranteeing to creditors that so far as consistent with the other provisions of the bill their rights should be the same as under the old act was added to the bill after it had passed the House. (Bill in House, 76 Cong. Rec. 2905, 2906; Bill introduced in Senate with present subsection (n) added, 76 Cong. Rec. 4907, 4909.)

The Senate Committee filed no written report with respect to Section 77. However, a report was prepared as to Section 74 (Report of the Senate Committee on the Judiciary (Report No. 1215, 72d Cong., 2d sess.)) which explained the change in that section as follows (p. 5):

> It will be observed that section (h) of the House bill in this respect has been modified so that it applies only to "secured debts, the security for which is in the actual or constructive possession of the debtor or of the custodian or receiver." It was believed that if every form of collateral that was deposited as a security for a loan should be subject to review by the court in any proceedings under this

> act that it could but result in a greater value of collateral being required by the person or institution granting the loan in the first instance. The tendency would be to further restrict credit.

It is of some significance that in the "Criticisms and Suggestions Relating to H. R. 14359 and S. 5551, amending the bankruptcy act", at p. 95 (printed in 1933 for use of the Senate Committee on the Judiciary, 72d Cong., 2d sess.), there is printed at least one proposed plan for railroad reorganizations which expressly includes the right to enjoin pledgees from converting their security. This suggestion was rejected by the committee, and subdivision (n), to the opposite effect, added.

That the Congress did not intend to interfere with the right of any creditor, and particularly, the Reconstruction Finance Corporation, to sell the security in its possession is borne out by the discussion which occurred on the floor of Congress. This appears in part from the following answer by Mr. Sumners of Texas, who was sponsoring the bill in the House, to a question on this point (76 Cong. Rec. 2909):

> Mr. GARBER. What will be the preferential status given loans made by the government to the railroads, over investments in stock and bonds?
>
> Mr. SUMNERS. They are not given by this bill any preferred status which they do not now have and to whatever degree now preferred the status is not lessened. They are not disturbed.

To the same effect is the following discussion which occurred in the House at the time when the House voted to concur in the Senate amendments (76 Cong. Rec. 5359):

> Mr. GARBER. The Government has loaned to the railroads $350,000,000 or more. What protection does this bill give the Government?
>
> Mr. PARKER of New York. It protects the Government just as much as the Government is protected now, no more and no less.

The members of the Congress were thus concerned whether the security underlying some $350,000,000 of public money loaned to the railroads by the Reconstruction Finance Corporation would be impaired by the passage of the act. In enacting Section 77 there was no intent to limit the express powers of the Reconstruction Finance Corporation, or to empower the courts to prevent it from selling its collateral by injunction.[6]

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[6] The following appear to be the major objectives which the Congress sought to achieve by Section 77:

(1) The expense, delay, and inconvenience of numerous ancillary receiverships in other districts and jurisdictions were to be eliminated (76 Cong. Rec. 2787-2788; 4880; 5106-5107; House Judiciary Committee Report on H. R. 14359 (Report No. 1897) p. 5; Joint Hearings before Subcommittee of the Committees on the Judiciary on S. 3866 (a prior bill), p. 519.)

(2) The excessive fees sometimes allowed to attorneys, reorganization managers, and bondholders' committee members were to be reduced and fixed within limits to be set by the Interstate Commerce Commission (76 Cong. Rec.

(v) Subclause 15 of Section 2 of the Bankruptcy Act when read in connection with the 1933 amendments does not extend the jurisdiction of the Bankruptcy Court so as to permit it to enter the order under review in this case.

Although the Circuit Court of Appeals apparently found the necessary authority to issue the injunction in the 1933 amendments alone, the order of the District Court was based on the assumption that the necessary power came from reading Subclause 15 of Section 2 with Section 77 (R. 104). The same contention was vigorously asserted in the brief filed with this Court by the respondents in opposition to petition for writs of certiorari.

It is a cardinal canon of statutory construction, as was recently said by this Court, in referring to subclause (15) of Section 2 of the Bankruptcy Act in *Ginsberg & Sons.* v. *Popkin*, 285 U. S. 204, 208, that

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2923; 4887; 5106; 5127; 5359. House Judiciary Committee Report on H. R. 14358 (Report No. 1897), p. 5).

(3) Authority was to be conferred upon two-thirds of any class of stockholders or security holders to bind the balance of the class to any plan of reorganization approved as fair by the Interstate Commerce Commission and the court. The Act was to eliminate the hold-up tactics of small minorities having comparatively little at stake, who in the past have insisted upon preferential treatment before they would agree to any plan (76 Cong. Rec. 2785; 4882; 5128. House Judiciary Committee Report on H. R. 14359 (Report No. 1897), p. 7).

(4) Supervision of reorganizations was to be transferred from the committees of the investment banking houses, which in the past often have been accused of bad faith in connection with their control of the reorganization, to the

> General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment. * * *

In the above case subclause (15) of Section 2 was invoked to support a *ne exeat* order of the court, preventing an officer of a bankrupt corporation from leaving the jurisdiction prior to submitting to an examination by the creditors of a bankrupt corporation. It appeared that the distribution of the property of a corporation among the creditors might be defeated in case the order were not entered, since the creditors charged in the petition for the writ that the officer had converted corporate funds to his own use and was planning to leave the country, taking the funds with him. Nevertheless, this Court held (pp. 206, 208):

Interstate Commerce Commission, in order to better protect the public interest. (76 Cong. Rec., 5106–5129.)

Compare, in connection with the foregoing, the following: Rodgers and Groom, *Reorganization of Railroad Corporations under Section 77 of the Bankruptcy Act* (1933), 33 Col. L. Rev. 571; Weiner, *Reorganization under Section 77: A Comment* (1933), 33 Col. L. Rev. 834; Lowenthal, *The Railroad Reorganization Act* (1933), 47 Harv. L. Rev. 18; Wehle, *Railroad Reorganization under Section 77 of the Bankruptcy Act: New Legislation Suggested* (1934), 44 Yale L. J. 197; Douglas, *Protective Committees in Railroad Reorganizations* (1934), 47 Harv. L. Rev. 565; Friendly, *The Corporate Reorganizations Act* (1934), 48 Harv. L. Rev. 39, esp. pp. 41–48; Weiner, *Corporate Reorganization: Section 77B of the Bankruptcy Act* (1934), 34 Col. L. Rev. 1173; *Memorandum* of Jan. 31, 1933, by Joseph B. Eastman, Chairman, Legislative Committee, Interstate Commerce Commission, H. R. Rep. 1897, p. 5, 72d Cong., 2d sess. (1933).

> Clause (15) is to be construed having regard to the other parts of Section 2, to the provisions of the Act in respect of examinations concerning the business and property of bankrupts, and to Section 261 of the Judicial Code relating to writs of *ne exeat*
>
> * * * * * * * * there is no support for petitioners' contention that the general language of Section 2 (15) is a limitation upon Section 9 (b) or grants additional authority in respect of arrests of bankrupts.

Since the question of injunctions against the enforcement of liens on property of the debtor is specifically covered by subdivision (1) of Section 77, section 2 clause (15) may not be relied upon to change or broaden its provisions.

The rights of parties holding valid bona fide liens are similarly expressly protected by Section 67 (d); and the right of secured creditors to sell their securities pursuant to the terms of the pledge is expressly guaranteed by Section 57 (h), as construed by this Court in the case of *Hiscock* v. *Varick Bank of N. Y.*, 206 U. S. 28.

It would seem that no room was left for interpretation or for the application of Section 15 clause (2) of the Bankruptcy Act, since it may not be invoked to vary or broaden other provisions of the Bankruptcy Statute. That Section 2 (15) does not confer upon the District Court power to issue the injunction would seem necessarily to follow from the fact that that section has never in the past been construed to

authorize a bankruptcy court to restrain the sale of pledged collateral. The holding of the District Court for the Eastern District of Pennsylvania in *In re Browne*, 104 Fed. 762, in which the court had occasion to consider an application by a receiver in bankruptcy to make permanent a temporary order restraining the sale of wool pledged to secure promissory notes of the bankrupt may appropriately be quoted in this connection (p. 763):

> Clause 7 of section 2, giving the court power to "cause the assets of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided", *and clause 15 of the same section, giving power to "make such orders, issue such process and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this act", must, of course, be read in connection with the rest of the statute, and are necessarily qualified by such provisions as are to be found in clause "d" of section 67, concerning liens, and by clause "h" of section 57, concerning the method of ascertaining the value of securities held by the creditors.*
>
> In each case the restraining order is now dissolved, and the petition of the receivers is refused. (Italics supplied.)

A change so highly disturbing to existing arrangements and practices in railroad finance as that contended for by the respondents in this case must be found in plain terms. This Court will not be astute

to infer a legislative purpose to unsettle the general principles of law unless there is *express* verbal basis therefor in the Act itself. Such basis does not exist in Section 77.

C. *Section 77 and Section 2 (15) must be construed with Section 5 of the Reconstruction Finance Corporation Act, which expressly empowers the Reconstruction Finance Corporation to take over and liquidate collateral accepted by it as security for certain loans.*

(i) Applicable provisions of the Reconstruction Finance Corporation Act.

Section 5 of the Reconstruction Finance Corporation Act of January 22, 1932 (c. 8, 47 Stat. 5) provides for loans by the Corporation to aid in financing agriculture, industry, and commerce. Loans may be made under this Section "to aid in the temporary financing of railroads and railways engaged in interstate commerce"; such loans are required by the same section to be "fully and adequately secured." Included within these provisions are loans by the Reconstruction Finance Corporation to the debtor involved in this case.[7] Under the terms of Section 5, approval of the Interstate Commerce Commission is made a condition precedent to the granting of such loans. The Commission may require of the borrowing railroad that it comply with such conditions as to security and otherwise as the Commission may see fit to impose. The Board of Directors of the Reconstruction Finance Corporation is required to find, in

[7] See Appendix, pp. 5, 59, 80.

the case of each such loan, not only that the loan will be adequately secured, but also that the railroad is unable to obtain funds upon reasonable terms through banking channels or from the general public.[8]

These provisions as to adequacy of security are supplemented by the provision contained in Section 5, applicable to all loans made thereunder,[9] set forth as follows:

> The corporation (the Reconstruction Finance Corporation), under such conditions as it shall prescribe, *may take over or provide for the administration and liquidation of any collateral accepted by it as security for such loans.*[10] (Parentheses and italics ours.)

(ii) *These statutory provisions when construed in connection with Section 77 are controlling.*

The statutory provisions applicable to loans to railroads, enacted by the same Congress as enacted the amendment to the Bankruptcy Act, must be

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[8] See Appendix, p. 3.

[9] As of December 31, 1934, Reconstruction Finance Corporation had disbursed a total of $3,365,136,707.11 on loans made under this Section to all classes of borrowers. If the construction of Section 77, adopted by the Circuit Court of Appeals, is used as a precedent under Section 77 B, the adequacy of the collateral taken for some of these loans (in addition to the railroad loans) is likewise subject to question, in cases where the borrowers are companies which are permitted by the terms of Section 77 B to file a petition thereunder.

[10] This provision likewise applies to any loans which may be granted under subdivision (f) of Section 20, Title II of the Emergency Relief and Construction Act of July 1932, 47 Stat. 709. (Appendix, p. 3.)

construed in *pari materia* with the provisions of Section 77. The contention that the express grant of power to the Reconstruction Finance Corporation to take over and provide for the administration and liquidation of collateral was qualified by the later enactment of Section 77 must be rejected for the following reasons:

(a) Congress, having expressly granted such power, may not be presumed to have conferred an empty prerogative. Rather must it be presumed that the power was granted in order that it might be used by the Reconstruction Finance Corporation, when, in the judgment of the Corporation, the taking over and liquidation of any collateral accepted by it might be necessary or deemed advisable to prevent a loss of public funds. The exercise of this power prior to the appointment of receivers or trustees is unlikely, since it would precipitate a hasty liquidation of assets which is, of course, contrary to the main purpose for which the Reconstruction Finance Corporation was created by the Congress and the Executive. Even less likely would be the exercise of the power to administer collateral in the case of still solvent borrowers since such action would cause a race of diligence among creditors for the calling of loans which would inevitably result in receivership or bankruptcy for the borrower. But if this grant of power to take over and provide for the administration of collateral is to be given any pragmatic effect, consistent with the underlying purposes of the Reconstruction Finance Corporation Act, exercise of the power must

be allowed *after* receivership or bankruptcy has occurred; otherwise the provision is of no practical utility.

(b) Implicit within the Congressional grant of power to the Reconstruction Finance Corporation to take over and liquidate collateral is the privilege without resorting to judicial proceedings, to sell the collateral to others or to buy it in, and to apply the proceeds of the sale against the borrower's indebtedness. Any other interpretation of the words "take over or provide for the administration and liquidation" of collateral held by the Corporation would repudiate the legislative intent of the Congress as evidenced by the debates which accompanied the passage of the act.

We submit, therefore, that this Court should not lay down any rule which will restrict the Reconstruction Finance Corporation in the exercise of a necessary and express power conferred upon it by the Congress.

We have already shown that there is no provision in Section 77 which authorizes the District Court to restrain the holder of collaterally secured notes of a debtor railroad from selling such collateral when a sale does not require judicial proceedings and is expressly authorized by the pledge agreement. We have also shown that on the contrary the provisions of Section 77 negative the implication that the court has such power.

Patently, this is not a case of the reconciliation of an earlier statute with a later enactment containing inconsistent provisions. Any apparent inconsistency

between Section 5 of the Reconstruction Finance Corporation Act [reaffirmed by the Act of January 20, 1934 (c. 3, 48 Stat. 318) enacted after Section 77 (Appendix p. 4)], and Section 77 results from the construction put upon the latter by the courts below. It has been contended before this Court (Brief of respondents in opposition to petitions for writs of certiorari, page 10) that for the source of the District Court's authority to enjoin the Reconstruction Finance Corporation resort must be had to subclause 15 of Section 2 of the Bankruptcy Act (11 U. S. C. A., Sec. 11) as it existed prior to the enactment of Section 77, reading as follows:

> The courts of bankruptcy * * * are invested, within their respective territorial limits * * * with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings * * * (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title;

But this Court should not permit a derivation of power from the so-called omnibus clause, couched in *general* language, to prevail over a power *expressly* granted by the Congress to the Reconstruction Finance Corporation under Section 5 of the Reconstruction Finance Corporation Act, above set forth.

The statutory power of the Reconstruction Finance Corporation to take over and liquidate collateral was not passed upon by the Circuit Court of Appeals.

III

CONSIDERATIONS OF ECONOMIC POLICY DO NOT SUGGEST STRAINING THE SETTLED LAW TO ENLARGE POWER TO ENJOIN PRIVATE SALE OF COLLATERAL; THEY LEAD RATHER TO AN OPPOSITE CONCLUSION. INDEED, SO FAR AS THE RECONSTRUCTION FINANCE CORPORATION IS CONCERNED, THE CONGRESS HAS SANCTIONED THE ECONOMIC POLICY HERE CONCERNED AND HAS SET UP AN ADMINISTRATIVE ECONOMIC CONTROL WHICH RENDERS IT UNDESIRABLE THAT THE ECONOMIC POLICY HERE INVOLVED BE OVERRIDDEN BY THE COURTS.

A. *Enlarging the area of injunctions against sale of private collateral will upset a tremendous volume of railroad finance and will lead to a distortion of the existing situation.*

Economic considerations have been urged as bearing on the issue presented by the instant case.[11] But arguments addressed to the economic field have to proceed on economic grounds. In that area only the result counts; legal distinctions become immaterial. Thus, to the suggestion that the injunction is not against the pledge of collateral, which is substantive, but only against the private sale of collateral to pay the debt, which is remedial,[12] the economist's answer is that it is immaterial where the impossibility is created, if the result is to make the loan impossible.

It is indisputable that an injunction of this nature substantially cuts off the power of a railroad to

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[11] See for example, Hatch, *A Form of Depression Finance—Corporations Pledging Their Own Bonds* (1934), 47 Harv. Law Rev. 1093.

[12] The distinction was made by the Circuit Court of Appeals below (R. 326).

borrow on short-term credit. A loan which can be tied up for an indefinite period is not a liquid loan; therefore it is rarely acceptable to banks, which are at present the principal source of short-term credit.[13]

(i) The economic effect: perpetuating corporate security holdings.

Unfortunately, the economic effect is by no means exhausted when it is said that the use of the short-term loan becomes greatly restricted.

Railroads are always corporations. Substantially all have the power to own and hold securities in other corporations. They frequently hold stocks and bonds of roads which are constituent parts of their system. It is common knowledge that they frequently hold securities of other companies more or less ostensibly incidental to their business: stocks and bonds of connecting lines; stocks of lines which at one time they hoped to control, stocks of land companies and enterprises along their rights-of-way; stocks and bonds of terminal companies. Subsidiary railroads forming a part of the parent system are by no means necessarily logical adjuncts to that system. They may be haphazard acquisitions, historical survivals of past financial struggles, or half-completed enterprises.

A major economic corrective to this concentration is the attrition which becomes possible, when a railroad after pledging its assets, defaults. If this form

[13] Compare, Hardy and Viner (1934), *Report on the Availability of Bank Credit in the Seventh Federal Reserve District.* (Report prepared for United States Treasury Department.)

of securing short-term notes is eliminated, the railroad will tend to go into receivership with this body of assets intact. Rarely has there been substantial dispersion of these assets as a result of reorganization. Rather, they are dealt with so that the railroad's property, including stock and bond interests in other corporations, emerges nearly intact. Almost the only avenue by which they can be dispersed is through direct sale, or sale to pay off collateral loans, and their passage into the hands of a creditor.

Deletion of corporate short-term credit secured by pledge of securities would as likely as not tend merely to perpetuate absurd situations.

Extension of the doctrine set out by the Circuit Court of Appeals would tend indefinitely to perpetuate concentrations of security holdings in corporations. The decision of the Circuit Court of Appeals here under review has already been invoked as authority to justify injunction against the sale of pledged securities by creditors of an industrial corporation in bankruptcy under the provisions of Section 77B—a similar statute applied to nonrailroad corporations. In the case of *In Re White Truck & Transfer Company* (District Court for the Southern District of California, September 14, 1934, not yet officially reported), it was held that the bankruptcy court might restrain a chattel mortgagee from taking possession of chattels in control of the debtor; a similar result was reached with respect to the vendor of property sold under a conditional sales agreement. The doctrine of the instant case was cited as authority.

We would ask the Court to consider the effect of this doctrine as applied to a so-called "investment trust" corporation, or a "grab-bag" public utility holding company. The effect on commercial processes in general, and on the perpetuation of corporate structures, is material.

The results of sustaining the injunction are almost unpredictable. It is reported that approximately 200 cases of reorganization under Section 77B are already pending in the District Court for the Southern District of New York alone; 357 cases in Chicago. If this doctrine becomes general the economic aftermath will of necessity be grave.

(ii) There is likewise an economic reason for the practice of pledge by a railroad of its own obligations held in its treasury: without this facility, it may be at the mercy of the stock market or of investment banking, or both.

The pledge of a railroad's own mortgage bonds as security for a loan is not anomalous. The use of the mortgage bond as a security device is associated historically with the development of the American railroad.[14] Frequently the railroad's only method of

[14] See, generally, Ripley, *Railroads: Finance and Organization* (1915) 143; Dewing, *Corporation Securities* (1934) 263, 276-278; Mitchell, *The Collateral Trust Mortgage in Railway Financ* (1906) 20; Cleveland and Powell, *Railway Finance* (1912) 47-49; 20 *Quarterly Journal Economies* 443.

Compare, *James* v. *Railroad Co.*, 6 Wall 752. (1867); *Androscoggin R. R. Co.* v. *Auburn Bank*, 48 Me. 335 (1861); *Morris Canal & Banking Co.* v. *Fisher*, 9 N. J. Eq. 667 (1855); *Morris Canal & Banking Co.* v. *Lewis*, 12 N. J. Eq. 323 (1858); *Curtis* v. *Leavitt*, 15 N. Y. 9 (1857); *Jesup* v. *City Bank*, 14 Wis. 331 (1861).

anticipating known cash income was through pledge of its long-term obligations which had acquired a known liquidity and market price; yet permanent increase of its bonded debt was plainly undesirable. The bonds of its subsidiary or constituent corporations which had no similar open-market status, could be given such status when placed behind a direct obligation of the railroad (as by a collateral trust issue); and such issues have frequently been created principally for the purpose of providing an avenue of short-term financing where possible, as well as of long-term financing when necessary.

When bond issues can be brought out in the open market only at a serious discount from face value, or when the market is unfavorable, the only expedient may be a loan secured by a pledge of unissued bonds of the railroad, or of its subsidiary railroads, or bonds held in the treasury. The Interstate Commission has directly approved the practice. In approving a pledge by a railroad of its own bonds, the Commission has generally fixed the pledge at a standard ratio of not more than $125 of bonds at current market prices for each $100 in face amount of notes secured.[15] A pledge by a carrier of its own bonds may also occur when the long-term market is closed to most carriers, as at the present time. In order to take advantage of whatever short-term market exists, the road may issue early-maturity notes secured by a pledge of its long-term mortgage

[15] See, for example, 175 I. C. C. 169, 188, 472; 180 I. C. C. 25, 42, 161, 337, 349, 352, 519, 625, 699, 747; 193 I. C. C. 125, 147, 161, 248.

bonds, and, the bonds so pledged will exceed usually in face value the amount of the notes.[16]

The full significance of this security device in current financing is obtained when viewed against the background of the following summary review of the financial and economic emergency of the railroads. At the close of 1931 the total investment in "road and equipment" of the American steam railways, taken as a whole, amounted to some $27 billions. Against this property investment, however, the railroads had outstanding a total funded

[16] In 1932, the railroads issued over $1,000,000,000 of their mortgage bonds, the bulk of which were issued as collateral securing total borrowing of approximately $650,000,000. *U. S. Daily*, Jan. 18, 1933, at 2005. While not all of this amount consists of pledges of the roads' bonds for their own debts, an examination of the Interstate Commerce Commission Finance Dockets covering approvals of Reconstruction Finance Corporation loans indicates that probably 90% of the issues were of this character. For issues typical of the problem under discussion, see the following: The Baltimore & Ohio R. R. Co., I. C. C., F. D. No. 9268, 9659, 10554; Boston and Maine R. R. Co., *id.* 9358; Chicago and Eastern Illinois Ry. Co., *id.* 9154; Chicago and Northwestern Ry. Co., *id.* 9167, 9804, 10637, 10088; The Denver & Rio Grande Western Ry. Co., *id.* 9181, 9562, 9777; Erie Railroad Company, *id.* 9148, 9655, 9936, 10689; Lehigh Valley R. R. Co., *id.* 9308, 9664, 10642; Missouri Pacific R. R. Co., *id.* 9146; The New York Central R. R. Co., *id.* 9180, 9465, 9870; St. Louis-San Francisco Ry. Co., *id.* 9147; Southern Pacific Company, *id.* 9863, 9892; Southern Railway Company, *id.* 9168, 9581. As of December 29, 1934, Reconstruction Finance Corporation net loans outstanding to railroads, and railways and receivers, and trustees thereof in the aggregate amount of $373,855,435 were collateralized by securities whose total principal and/or par value thereof is about $930,000,000, equivalent to approximately 2½ times the face amount of the indebtedness.

debt amounting to $13.3 billions, or, in other words, about one-half the book value of their property.[17] At the end of the same year, forty-five steam railways, large and small, representing about five percent of the total railway mileage of the country, were in receivership.[18]

By 1932, the proportion of railway mileage in receivership had increased to approximately ten percent of the total.[19] The ten Class I roads placed

[17] See I. C. C. annual, Statistics of Railways in the United States, 1931, Statements 17 and 54.

[18] *Id.*, Statement No. 6.

[19] The following statement shows the steam railway mileage in the hands of receivers, as reported by the Interstate Commerce Commission, for each year from the low point of the depression period of 1893 to the year 1933, inclusive:

Steam railways in the hands of receivers and/or trustees, all railways, years 1894 to 1933

Years ended—	Miles of road operated
June 30, 1894	40,818.81
1895	37,855.80
1896	30,475.39
1897	18,861.68
1898	12,744.95
1899	9,853.13
1900	4,177.91
1901	2,497.14
1902	1,475.32
1903	1,185.45
1904	1,323.28
1905	795.82
1906	3,971.43
1907	3,926.31
1908	9,529.03
1909	10,529.80
1910	5,257.03
1911	4,592.89
1912	9,785.83
1913	16,286.18
1914	18,608.21
1915	30,223.05
1916	37,353.45

in receivership during the years 1930, 1931 and 1932, operated some 17,000 miles of line and had a total funded debt at the end of 1931 of approximately $795 millions.[20] As of November 1, 1932, the total railway obligations in default amounted to $410,728,900. In the succeeding twelve months there was an increase of $1,072,790,490.[21]

Total operating revenues of all of the railways diminished from a peak figure of $6,619 millions in 1926 to $4,317 millions in 1931.[22] The total income, after paying operating expenses, taxes, equipment and joint facility rentals, reached its maximum in 1929, with a total of $1,484 millions.[23] By 1931, this figure had dropped to $738 millions. Out of this sum de-

(Continuation of footnote from p. 76.)

Years ended—Continued.	Miles of road operated
Dec. 31, 1916	34, 803. 56
1917	17, 375. 51
1918	19, 207. 58
1919	16, 589. 76
1920	16, 290. 17
1921	13, 512. 35
1922	15, 259. 11
1923	12, 623. 24
1924	8, 105. 24
1925	18, 686. 99
1926	17, 631. 55
1927	16, 751. 88
Dec. 31, 1928	5, 255. 54
1929	5, 702. 92
1930	9, 486. 28
1931	12, 970. 12
1932	22, 545. 14
1933	41, 698. 00

It appears from the table set out above that the railway mileage in receivership or in the hands of trustees in bankruptcy in 1933 was greater than in any previous year of record, and was greater even than during the depression of the early nineties. At the close of 1934, railway mileage in receivership or bankruptcy approximated 42,249 miles, or almost twice the 22,545 miles of 1932. Therefore, despite in

ductions were made in the nature of "fixed charges"[24] amounting to about $73 millions, and interest on funded debt, $580 millions, leaving for stockholders' equity, other than railway intercorporate holdings, a net income of $75 millions for the year.[25] It is to be further noted that of the 167 railway systems of "Class I",[26] 75 failed to cover their fixed charges in 1931, and had nothing left from gross earnings for their stockholders' equity. Bonded interest and guaranteed lease rentals were met only by drawing upon cash balances or by resorting to the expedient of short-term bank loans.[27] And, as has been shown above, such loans could be made, if at all, through private banking channels, only on the basis of pledging corporate securities.

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creased earnings and some improvement in railroad prospects in 1934, the mileage of railroads in the courts tops by a fair margin the previous record total of 40,819 established in 1894. *Cf. New York Times*, January 6, 1935, at C N9.

[20] Clark, *The Internal Debts of the United States*, at 101–102.

[21] Wall Street Journal, Dec. 9, 1933, at p. 4.

[22] The annual average for the five years, 1926 to 1930, was $6,244 millions. *Statistics of Railways in the United States*, 1931, S–54.

[23] *Ibid.*

[24] Includes rent for leased roads, miscellaneous rents, interest on unfunded debt, discount amortization, and miscellaneous income charges.

[25] *Statistics of Railways in the United States*, 1931, S–54. But compare this figure with an annual average of $701 millions during the five years 1926 to 1930.

[26] Companies having annual operating revenues above one million dollars.

[27] See Clark, *op. cit. supra* note 20 at 102.

"Refunding" operations (to the extent of $250 to $275 millions annually) took place during the early months of 1931, but as the year advanced the roads found that new security issues could not be floated. As a result, a considerable number of the roads became heavily indebted to banks and others on short-term loans proceeds of which were used to take up maturities.[28]

As 1932 approached, the two sources open to the roads for meeting their fixed interest payments (short-term commercial bank credit and sale of new security issues) had both contracted in most cases to the vanishing point. With the exception of a relatively small number of strongly entrenched carriers, such as *Norfolk & Western; Chesapeake & Ohio; Union Pacific;* and *Atchison, Topeka & Santa Fe,* receivership or resort to governmental credit or bank credit secured by collateral were alternatives for saving the majority of the road mileage from complete financial collapse.

Primarily to avert this threatened epidemic of receiverships, and to enable the roads to meet their requirements, the Reconstruction Finance Corporation, which was created by the Act approved on January 22, 1932, was empowered by the Act to make short-term loans to railroads. The purposes of the Act are known by its title: "An Act to provide emergency financing facilities for financial institu-

[28] See *Statistics of Railways in United States,* 1930, 1931, Statement No. 42, for increase in volume of railway loans and bills payable.

tions, to aid in financing agriculture, commerce, and industry, and for other purposes" (Appendix, p. 1). Under Section 5 of the Act the Corporation was authorized to make loans "to aid in the temporary financing of railroads and railways engaged in interstate commerce" (Appendix p. 3). The intendement of the Act appears clearly from the above provisions, and from the limitation that the corporation could only make loans to railroads, "when in the opinion of the board of directors of the corporation such railroads or railways are unable to obtain funds upon reasonable terms through banking channels or from the general public and the corporation will be adequately secured" (Appendix, p. 3). On February 2, 1932, the Corporation began its activities.

Let us pause to consider the effect of crippling short-term credit, had there been no crisis—that is, under conditions prevailing prior to 1929. Railroads would have been forced to seek credit by selling these same treasury securities in the open market instead of endeavoring to pledge them.

The first effect would be to increase the control which the New York banking houses historically have had on railroads because the railroads were forced to turn to them for recurrent long-term financing. Short-term loans, offering possibility of being paid off, at least presented a temporary escape. A second effect assumes that investment bankers would have been invoked in any event, either by the railroad or by the commercial banks.

But there is a difference. In the latter case the railroad has at least a chance to pick its own market, and is not necessarily forced to sell at a time when the market is low, or is manipulated, or open market sales will prejudice other legitimate needs of the road. A third possible effect might be that a railroad in desperate circumstances would sell its treasury securities for whatever they would bring. It is a fair assumption that a management group will not usually go into receivership or bankruptcy until it has spent its last resources. In that case *the effect* would be merely to set these securities afloat, swelling the debt structure of the railroad by direct sale instead of by pledgee sale, and (if reorganization were escaped) permanently to burden the road with greater fixed charges.

If it is sought to obviate a swelling of the debt structure, cutting off a line of short-term credit will certainly not do it. Rather, it will tend to increase the swelling of the debt structure.

If it is sought to prevent the dispersal of the assets of the railroad, it may be asked whether any such compelling economic case for that result has been made out as would justify a court in lending its aid toward that result. And it is almost equally questionable whether the Court cares to indulge in an economic presumption as to whether railroad management and railroad reorganization is more desirable when controlled by investment bankers than by commercial bankers.

B. *The injunction invades the contractual rights and not merely the remedy of the Reconstruction Finance Corporation.*

The opinion of the Court of Appeals states (R. 326) that the injunctional order assailed affects merely the remedy, and not the contract rights, of the creditors holding collateral. For authority that "such restraining orders affect the remedy only", the opinion cites *Allebach* v. *Thomas*, 16 F. (2d) 853. But if the reasoning of the court in the *Allebach* case is considered carefully, that decision indicates unequivocally that the injunction in case at bar definitely invades the rights of the Reconstruction Finance Corporation.

In the *Allebach* case, the bankruptcy court was upheld in enjoining the sale of certain real estate by a mortgagee under a State statute. The effect of the injunction, as stated in the opinion, was to require the mortgagee to sell the mortgaged real estate under the supervision of the bankruptcy court and through its trustee rather, than pursuant to the local procedure. The court accordingly held that since the mortgagee's right to sell the property was not denied, but was permitted, even though under the supervision of a different tribunal, the mortgagee's substantial contract rights were not invaded. The reasoning of the court is clearly shown by the following quotation from the opinion (p. 855): "The remedy may be altered without impairing the obligation of his contract, *so long as an equally efficient and adequate remedy is substituted.*" (Italics supplied.)

Neither the reasoning nor result of this case apply to the present proceeding. Here the Reconstruction Finance Corporation is permitted no corresponding right of sale under the supervision of the bankruptcy court. As the Court of Appeals has stated, the object of Section 77 is the consummation of a plan of reorganization. Until it can be seen whether this object can be accomplished, the pledgee will not be permitted to sell the pledged property. Instead, his claim is transformed into a nonvoting proprietary interest for an indefinite period, with no assurance that a plan can ever be effected under the Act.

By a denial of the remedy without the substitution of any equivalent, the contract right is definitely and unquestionably invaded. Mere *postponement* of the remedy for a period as short as twelve months is an impairment of the contract right, although such impairment by State law has recently been held permissible when required by and reasonably adapted to meet an economic emergency. *Home Building and Loan Association* v. *Blaisdell*, 290 U. S. 398.

It would seem from the order of the District Court and from the opinion of the Circuit Court of Appeals, that the present injunction will be maintained in force until a plan of reorganization has been prepared, submitted, and adopted; or until it is apparent that no plan of reorganization can be agreed upon. The period of time that may be required for the effectuation of such a proceeding is unpredictable. Throughout this long and unpredictable period the right of sale given the Reconstruction Finance Corporation

by the contract will be denied without the substitution of an equivalent remedy. We submit that the unwarranted order of the District Court definitely invades the contract right itself. The denial of the means to enforce a contract is an abrogation of the contract. *W. B. Worthen Co.* v. *Thomas*, 292 U. S. 426, 433.

C. *Congress, through the Reconstruction Finance Corporation Act, elected to follow the policy during the existing emergency, of financing railroads by short-term collateral loans from the Reconstruction Finance Corporation, each transaction being controlled by the Interstate Commerce Commission as guardian of the soundness of financial policy. This amounts to a Congressional determination of financial policy which, as a matter of sound government, this Court should not override.*

The Congressional policy in question was foreshadowed by administrative action of the Interstate Commerce Commission in 1931.

The Railroad Credit Corporation was organized at the close of 1931 to administer the proceeds obtained from the special freight rate increases authorized by the Interstate Commerce Commission in October of that year. It partially assumed responsibility for financing railroad requirements by short-term loans secured by collateral.[29]

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[29] See, in general, *Fifteen Per Cent Case*, 1931, *Ex parte No. 103*, 178 I. C. C. 539; 179 I. C. C. 215; *47th Annual Report of the Interstate Commerce Commission* (1933) at 11–12; *Moulton, The American Transportation Problem* (1933) at 67–68.

In January of 1932 direct government intervention took place.

From the date of its organization, February 2, 1932, up to December 22, 1934, the Reconstruction Finance Corporation has received the approval of the Interstate Commerce Commission upon applications from railways for a total of approximately 460 millions of loans to 82 roads.[30]

The Reconstruction Finance Corporation has outstanding with 36 Class I carriers, constituting many of the most important systems of the country, loans averaging more than $10,000,000. The loans to these 36 Class I carriers aggregated, as of December 29, 1934, $367,756,962, comprising as of that date 98.4 percent of all outstanding loans to railroad

[30] *Authorized loans to railroads by Reconstruction Finance Corporation, as of December 29, 1934*

Loans were authorized to railroad companies by Reconstruction Finance Corporation for the following purposes:

For interest	$121,664,291
For equipment trusts	40,839,765
For bonds and other funded obligations	107,862,993
For loans from banks	37,793,900
For other loans	16,200,587
For work loans, rebuilding and/or construction of equipment, etc	8,905,577
For additions and betterments, new construction	53,499,341
For taxes	31,987,308
For wages, past due vouchers, etc	23,165,768
For miscellaneous	15,936,550
Total amount authorized	457,856,080
Cancellations to date	5,207,556
Authorizations less cancellations	452,648,524

(Table prepared by Railroad Division, Reconstruction Finance Corporation.)

borrowers. As collateral security for the loans to these 36 Class I railroads, the Corporation holds securities of a *face* value of approximately $930,000,000, or a ratio of over two and one-half to one. As was pointed out above, the excess of *face* amount of the collateral over the actual loans is not anomalous since the preponderance of the deposited collateral is composed of junior securities of the borrower, and/or stock or securities of, and/or assignment of advances to subsidiary or affiliated companies, which have been the only collateral available to the borrower.[31]

The indebtedness of the debtor and the amount of collateral holdings for the said indebtedness has been set out above.[32] The percentage of the *face* value of the collateral received from this debtor does not differ materially from the percentage in the case of other carriers of equal or greater importance, nor does the percentage of the *value* of the collateral. (See value put upon the collateral by the debtor, Appendix, p. 83.)

The present case involves only the usual loan made by the Reconstruction Finance Corporation to a railroad, secured by the usual amount of collateral.

Restraint by the District Court of the exercise by the Reconstruction Finance Corporation of the powers

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[31] That the Reconstruction Finance Corporation was intended to make loans of exactly this character is evidenced from the hearings held in connection with the establishment of the Corporation. See, in this respect, *Hearings Before the Committee on Banking and Currency on H. R. 5060, 5116, 72d Cong., 1st Sess.* (1932), pp. 57–58, 67.

[32] See, *supra*, pp. 3–4.

expressly granted to it by the terms of the notes it holds, and in Section 5, not only puts in question the adequacy of the security taken for the $457,856,080 of railroad loans authorized as of December 31, 1934 under Section 5, but likewise jeopardizes the security for loans authorized under the Emergency Relief and Construction Act of 1932, subdivision (f) of which contains an identical grant of express powers with respect to loans made thereunder.[33]

The Interstate Commerce Commission took an active part in developing the Congressional policy laid down by the Reconstruction Finance Corporation Act.

Not only has the Interstate Commerce Commission approved the instant loans to the debtor but applications when filed are public records, publicity thereof immediately appears in the press and the Commission has always been ready to receive, and give consideration to, objections from security holders of the debtor to the application for, and the granting of, the instant loans.

The Congress squarely had before it in 1932 the problem of meeting the railroad situation. It might have done so by permitting railroads simply to go into receivership; but it elected a different course. The Interstate Commerce Commission had initated, in 1931, through the medium of the Railroad Credit

[33] See Appendix, p. 3. Under this Act, as of December 31, 1934, 177 loans were authorized in the aggregate amount of $245,647,055 and disbursements, as of the same date, amounted to $123,095,702.

Corporation,[34] the policy of secured short-term loans to weak carriers. The Reconstruction Finance Corporation was authorized to make loans on adequate collateral for a period of not to exceed three years;[35] and thereby the Congress virtually laid down a policy in favor of this method of dealing with the situation.

In view of this determination of policy, can the courts now say that it is an undesirable economic policy and that a strained construction of a statute should be adopted to nullify it? To do so would be to take the courts very far into the domain of executive government, a responsibility which the judicial arm is, we believe, loath to undertake.

It may be assumed that such loans were "to aid in the temporary financing of railroads and railways", and that the Interstate Commerce Commission as a condition precedent to granting those loans held hearings; carefully examined the financial condition of the railroad; considered the public's interest; prescribed the collateral to be pledged under the loan and the term of the loan. It had discretion to refuse to do so or to impose additional conditions. The Congress did not leave the granting of the loans in question to haphazard chance or even to the discretion of the Reconstruction Finance Corporation.

Where the policy involved is not declared, the problem of economic desirability may be open. But

[34] See *supra*, p. 84.

[35] See Reconstruction Finance Corporation Act, Sec. 5, Appendix, p. 2.

where the Congress has indicated a general standard of policy, and has left its application to an expert body charged with the duty of developing a policy, should that policy now be overridden by a process of strained statutory construction?

The theory that the District Court desired to avoid interrupting a "pledge" but concentrated rather on a legalistic distinction which envisaged a radical revision of the "remedies" available to a pledgee is without merit. If the remedy is deleted, what is there left of the pledge? The purpose of a pledge is precisely to avoid sharing in the hotchpot of a bankruptcy administration; this is why pledges allow the collateral to be taken over.

The pledge and its remedy should be considered together: no valid basis exists for distinguishing them. Certainly they should be considered together, where the exercise of the remedy is incident to a determination of financial policy by the Congress, which as a matter of sound government, this Court should not override.

IV

NO NECESSITY HAS BEEN SHOWN FOR THE ISSUANCE OF THE INJUNCTION.

The order[36] of the District Court is based upon the following findings which upon analysis are mere assumptions:

(a) That certain collateral consisting of bonds of the debtor, or of its subsidiaries, and certain stock were pledged under three of the debtor's mortgages.

[36] See R. 101.

(b) That the sale of the collateral held by Reconstruction Finance Corporation and the banks would in effect, prevent the debtor's reorganization.

(c) That "it is necessary for the enforcement of the provisions of Section 77" that the sale of said collateral be enjoined "pending the preparation and consummation" of a reorganization plan.

Assumption (a) is not material in this case, without a finding (which the District Court properly failed to make) that a determination that the Reconstruction Finance Corporation had a right to sell its collateral would determine the right of the mortgage trustees to sell. As we have heretofore shown assumptions (b) and (c) are unsupported by any properly pleaded facts or evidence of record. The issuance by District Court of the order constitutes reversible error.

Upon analysis assumptions (b) and (c) rest upon two fallacies; that (1) the sale will cause such shifting of classes of creditors or such changes in the size of the various classes of creditors, or (2) such increase in the debt structure, as would prevent the debtor's reorganization.

It is the position of the Reconstruction Finance Corporation that under Section 77, pledged bonds must be treated as already outstanding for the purposes of the approval of a plan and, hence, there can be no shifting of classes of creditors or changes in the size of the various classes of creditors sufficient to prevent a plan being approved. It is further the position of the Reconstruction Finance Corporation, that, in the particular circumstances of this case, no

necessity was shown in the District Court for the issuance of the injunction.

We shall dispose of the first of these propositions, before directing the attention of this Court to the second.

A. *Under Section 77, the pledged bonds must be treated as outstanding for the purposes of the approval of the plan, and hence there can be no such shifting of classes of creditors or such changes in the size of the various classes of creditors as will prevent the preparation and effectuation of a plan.*

From the last sentence of subdivision (b) of Section 77, it clearly appears that claims represented by securities of the debtor held as collateral must be treated as outstanding for the purposes of the reorganization plan, its acceptance and confirmation; viz:

> The term "creditors" shall, except as otherwise specifically provided in this section, include, *for all purposes of this section and of the reorganization plan, its acceptance and confirmation, all holders of claims,* interests, or securities *of whatever character* against the debtor or its property, including claim for future rent, *whether or not such claims, interests, or securities would otherwise constitute provable claims under this Act.* (Italics supplied.)

No other specific provision in the Act prevents claims represented by securities of the debtor held as collateral from being included in classes of outstanding securities for all the purposes of the Section, including the voting upon a plan. Such claims must,

therefore, be treated as outstanding under the express provision of law above quoted for all the purposes of the Section. It is of little practical difference, so far as voting upon the plan is concerned, whether the Reconstruction Finance Corporation holds its collateral intact or assigns or sells the whole or a fractional interest thereof, since in any event "*all* holders of claims, interests, or securities of whatever character against the debtor or its property, * * * whether or not such claims, interests, or securities would otherwise constitute provable claims" under the Act, are entitled to vote upon the approval of a plan.

If, as indicated by the clear wording of the Act, holders of notes secured by collateral are entitled to vote, both as noteholders and in the respective classes in which they hold collateral, it is difficult to see what practical effect the sale of collateral could have upon the preparation and effectuation of a plan. There is no shifting of classes nor is the size of classes increased. The result accomplished is merely a substitution within a given class of one creditor for another.

B. *The sale of collateral by the Reconstruction Finance Corporation will not prevent the reorganization of the debtor.*

All but $7,575,000 face amount of the collateral held by the Reconstruction Finance Corporation consists of the *secured* obligations of subsidiaries of the debtor.

(i) The pledged collateral consisting of the secured obligations of subsidiary companies must be recognized in any plan of reorganization, whether it is sold or remains pledged.

It cannot be assumed that the debtor has itself guaranteed all of the subsidiary companies' bonds, since this is not the fact.[37]

In the absence of any allegation to the contrary in the petition for this injunction, it must be presumed that all the bonds of the subsidiary companies were negotiated to the debtor, and constituted property in its hands prior to the time of the pledge.[38]

If bankruptcy proceeding had been commenced before any pledge was made, the debtor company, as owner of these securities would have been entitled, in any liquidation, to realize on its lien, and enforce its debt on each of these bonds against the subsidiary companies. Creditors of the debtor (especially creditors having no security) would be entitled to insist upon this. Otherwise a valuable asset of the debtor itself would be handed over to the subsidiary company for the benefit of the subsidiary's creditors, and at the expense of the creditors of the debtor.

[37] If the full record is examined, statements may be found showing that two of the seventeen bond issues pledged with the R. F. C. are in some sense guaranteed by the debtor. This is contradicted by other statements that the debtor agreed to pay the *interest* as *rental* (R. 29), in which case the transaction, being a lease, would be voidable by the trustees. In any event the debtor, if it is in fact a guarantor, could insist on reimbursement from the subsidiary in case it was forced to pay.

[38] The record elsewhere affirmatively shows this is the case. (R. 13.)

Since each separate railroad (assuming, but not conceding, that it is part of one system) has its own creditors, the property of each railroad must be separately considered, and inter-company claims recognized, in order to provide each creditor with his proper share of the assets. Each railroad is a separate corporation with its own property and creditors, and a plan, to be fair and equitable to the respective conflicting interests, *must* make proper provision for the creditors of each company.

These subsidiary bonds were already outstanding, and were debts of the subsidiary companies even before the pledge.

They do not cease to be an indebtedness, or cease to be outstanding, whether in the portfolio of the debtor as property, or pledged to a lender as collateral security for the loan. There can thus be no "increase in the debt structure" by the sale of the subsidiary bonds. They are no less enforceable before a sale by the pledgee than after such a sale.

(ii) All the pledged collateral must be treated as outstanding, unless the pledgee is to be deprived of the benefit of his contract.

It may be urged the sale of the collateral would dilute the interests in the trust estate of the holders of certain bondholders and other creditors of the debtor, and of the debtor itself. Without conceding that this would be the result, it is a result arising from the use of rights which the pledgees paid for and which were granted to the pledgees by the debtor itself in the valid exercise of its corporate powers. (See Appendix,

pp. 24 and 64, 65.) No rights of the bondholders or other creditors of the debtor were violated by the contract between the debtor and the pledgees. Indeed, the Reconstruction Finance Corporation, at the risk of loss to the Government, advanced the Government's money in an effort to save the enterprise for the benefit of all parties including the bondholders and creditors. So far as dilution of the interests of the various parties is concerned, the sale of the collateral would dilute such interests, if the debtor had not filed a petition under Section 77. No one would contend that in such case the sale could be enjoined by any bondholder, creditor, or by the debtor on the ground of dilution. There is nothing in Section 77 that authorizes a court to take away rights from one class of creditors for the benefit of other creditors. This seems to have been the real object of the debtor's petition.

Furthermore, it should be repeated that the pledge of the collateral was authorized by due corporate action of the debtor, and of the Interstate Commerce Commission (the administrative control established by Congress); and that the validity of the pledge is not questioned by the respondents. To invalidate the pledge in these circumstances is to deny to the pledgee the benefit of his contract, in order to give to other creditors of the debtor, and to the debtor itself, an advantage for which they had not bargained.

The District Court's assumption that if the pledged collateral is sold, there would be an increase in the debt structure, which would in some unexplained

way prevent a reorganization being effected, is unrealistic. The assumption is unsupported by any facts of record.

Assuming (but not conceding) that there would be such an increase, the finding that an increase will prevent a reorganization of the debtor is a pure assumption and nothing more. It is bad reasoning to say that, while a plan of reorganization for liabilities of the debtor amounting to $400,000,000 can be effectuated, none can be consummated providing for liabilities of $600,000,000. The very statement of the proposition shows its absurdity.

(iii) Power to sell collateral instead of tending to "hinder, impede, obstruct, delay, and in effect prevent" consumation of a plan of reorganization will in practice expedite it.

The order of the District Court is predicated upon the unwarranted assumption that the power to sell the pledged collateral tends to obstruct the consummation of an orderly plan of reorganization. While historical material may not be particularly instructive, a realistic approach shows the fact to be exactly the opposite.

The power to sell collateral has existed wherever railroads went into receivership before enactment of Section 77; and reorganization of those roads has been consummated. It is probably true that the short-term debt secured by pledge in many, if not all, of these cases in recent years, was materially less than the short-term debt of railroads now in diffi-

culties, and of the debtor here. This, however, is no reason why the power of the holders of this short-term debt to sell their collateral is an obstacle to the debtor's reorganization.

On the contrary, removal of the power to sell collateral removes likewise a powerful motive for consummating and completing a plan. The pledgee-creditor, if the debtor's contention is sustained, is denied the right to reduce his collateral to ownership and thereupon to insist that the debtor either meet his obligations, compromise them by a plan of reorganization, or surrender the property. The debtor, within the sheltering haven of an injunction, may simply wait—this at the expense of the creditor. If waiting proves the wrong policy, the creditor loses. If conditions change for the better, the creditor is paid off or a compromise reached; all, apparently, at the option of the debtor.

The Court will, we believe, take judicial notice of the fact that a railroad reorganization is essentially a bargaining process between creditors and security holders. The result turns largely on the position of the respective parties. A mortgagee able to foreclose has one position. A mortgagee unable to foreclose has another. A note holder, separated by injunction from mortgage collateral, has almost no bargaining power at all, and may be dealt with lightly in the timing of the reorganization or in ultimate distribution of new securities. These considerations are particularly compelling in the case at

bar. Here the short-term debt is so large that it is hardly conceivable that the short-term debt can be paid off in cash on reorganization.

With holders of outstanding secured notes free to act, there is a powerful lever tending to overcome dilatory tactics on the part of the debtor or the other creditors. If, however, they are prevented from acting, the debtor and his other creditors have a positive incentive to delay a plan. By waiting, the debtor and other interests can literally gamble with the noteholders' money.

Most of this short-term debt of the debtor represents loans from the Reconstruction Finance Corporation, which went in part to pay interest on the very bonds (see Appendix, pp. 28, 29, 70) represented by some of the committees, which have urged this injunction. A part went to pay off loans to the debtor by the banks, which in consideration of such payment, extended the balance of their loans to the maturity date of the new loan made by the Reconstruction Finance Corporation (Appendix, p. 41). In other words in place of a large amount of bonds sold just prior to receivership (which bank creditors normally do when receivership impends), the Government, by its short-term operations, has minimized the outstanding indebtedness of the railroad for the benefit of existing bondholders (some of these loans, as mentioned, were used to pay bond interest), and to maintain the financial structure of the railroad.

Unless this Court upholds the contention made in this brief that, under subdivision (b) of Section 77,

the holders of notes secured by collateral, for all purposes of this section and in particular for the purpose of voting upon a plan, are entitled to vote both in the class of note-holders and in the respective classes in which their collateral falls, the Reconstruction Finance Corporation also will stand a fair chance, in any reorganization, of being offered junior securities of low value, instead of securities of a priority and quality which recognizes the mortgage position of its collateral. The Government, through the Reconstruction Finance Corporation, will suffer because of the very benefit it has conferred. This, too, in violation both of the normal economic process and of the institutional practice of many years' standing.

It is difficult to understand why bondholders who purchase bonds ~~prior~~ to receivership at a pledgee sale from banks, should be favored in contrast with the Government which has held claims at a minimum by holding its collateral and maintaining the structure.

This is a matter of grave concern to the Government. In many cases the Reconstruction Finance Corporation is the largest single creditor of railroads. Its claims are all short-term debts secured by collateral as the Reconstruction Finance Corporation Act requires. If there is a loss, it falls ultimately on the taxpayers of the United States. It is not easy to see why the taxpayers should be sacrificed to bondholders or to the interests of a corporate debtor; and

it is impossible to see how that process avoids any obstacle to reorganization.

V

THE PRESENT INJUNCTION IS NOT A MERE TEMPORARY RESTRAINING ORDER

A. *When, may we ask, is the Reconstruction Finance Corporation to be permitted to sell its collateral?*

The order of the District Court is predicated upon the assumption that the injunction is necessary to effect a reorganization. The order purports to be a final disposition of the issue until a plan of reorganization is effected, or the proceeding under Section 77 dismissed. Since the filing of a petition under Section 77 of the Bankruptcy Act is a privilege of the debtor, the construction placed on the Act by the District Court virtually reduces a pledgee, in a case like the present, to the mercy of a debtor who has filed under Section 77, irrespective of the final nature of the reorganization, or the provision ultimately made for the collateral held by secured note holders.

The case at bar is illustrative of the point. Nowhere in the record in this case is there a showing that a plan of reorganization of the debtor is even in process of formulation by any of the interested parties, although subdivision (d) of Section 77 requires that the debtor *shall* present to the Interstate Commerce Commission a plan of reorganization.

The attitude of the debtor's reorganizers is strikingly revealed by the following excerpts containing a summary of the minutes of a meeting of the creditors

of the debtor and other interested parties, held on October 11, 1934: [39]

> Mr. Beebe, of the First and Refunding Committee stated that, in his view, any reorganization should be permanent and not temporary; that any reorganization attempted at this time would result in too great sacrifice to the holders of bonds, and that it is not fair to them to ask them to do that. The Chairman of the trustees thereupon said that in view of the fact that it seemed impossible for a proper reorganization to be brought about, perhaps the spirit of Section 77 could not be carried out and perhaps it was the duty of the trustees to so report to the Court and resign * * *.
>
> The Chairman thereupon asked the meeting what they considered to be the duty of the trustees in the premises. Mr. Root replied that if a plan were presented at the present time it would undoubtedly fail to receive the necessary approval of the various classes of creditors and the Court would thereupon have immediately before it a motion to dismiss these proceedings, and if the proceedings were dismissed it would be followed by an Equity Receivership. The Chairman asked if that would help matters and Mr. Root said no, that the situation would be much worse and with this proposition there seemed to be general assent.
>
> Mr. Bailey said that he regarded it as impossible to make a permanent reorganization

[39] For certified copy of letter from Trustees of debtor to Director, Bureau of Finance, I. C. C., appearing in the Commission's Finance docket No. 10028, see Appendix, p. 167.

under the present conditions. In this view Mr. Kitchel agreed, as did Mr. Bogue and Mr. Moulton.

The Chairman thereupon asked if there was anyone present who thought it was possible or advisable or the duty of the trustees, to present a reorganization plan at this time and there was no response.

* * * * * *

Since the date of such meeting several other general meetings with the representatives of the various interests in the Trust Estate have been held and the affairs and the financial condition of the Trust Estate laid before and discussed with them, and no one has suggested to the trustees that they believe it advisable to formulate and propose a plan of reorganization under the existing conditions. [40]

---

[40] It should not be presumed that the incidence of delay characteristic of the case at bar is at all anomalous; protracted delay has been characteristic of the reorganization of American railroads. The average duration of the railroad receiverships between 1894 and 1931 of roads operating more than 100 miles was in excess of 4 years. Based on *Interstate Commerce Commission Bureau of Statistics*, Statement No. 33206, File No. 52–A–2; I. C. C. Ann. Rep. on Statistics of Railways in U. S. Section 77 apparently does not offer abundant promise that the situation in this respect will change. This Court will, we believe, take judicial notice of the fact that altogether fifteen proceedings, (of which one by a small property has been dismissed) have thus far been instituted under the new section. This figure does not include those subsidiary and/or affiliated carriers which filed petitions in the same proceeding as the debtor-parent. Of those proceedings pending there are five involving large Class I roads, instituted on the dates, in Federal district courts, in cities, as follows: Missouri Pacific Railroad Company, filed on March 31, 1933 (St. Louis); Chicago and Eastern Illinois (the C. & E. I.),

B. *Unless the Reconstruction Finance Corporation is afforded by this Court the relief to which it is clearly entitled, it will suffer further hazard and possible irreparable harm.*

We beg to call to the attention of the Court that no bond or other security was exacted by the District Court so that the Reconstruction Finance Corporation must take the entire risk which arises from a further depreciation in the value of its collateral, pending the dissolution of the District Court's order.

At a time when the railroads of the country are faced with a major financial crisis due to lack of business, the competition of unrestricted forms of transportation, and a rise in operating expenses due to wage increases, compulsory pensions, and the

---

April 18, 1933 (Chicago); St. Louis-San Francisco Railway Company (the Frisco), May 16, 1933 (St. Louis); Chicago, Rock Island and Pacific Railway Company (the Rock Island), June 7, 1933 (Chicago); and Chicago, Indianapolis & Louisville (the Monon), December 30, 1933 (Chicago). The other ten cases involve minor properties, viz: Alabama, Tennessee & Northern Railroad Corporation; Akron, Canton & Youngstown Railway; Arkansas Valley Interurban Railway; Chicago, South Shore & South Bend Railway; East St. Louis, Columbia & Waterloo Railroad; Fonda, Johnstown & Gloversville Railroad; Kansas City, Kaw Valley & Western Railway; Meridian & Bigbee River Railroad; Minarets & Western Railroad; Spokane International Railway Company. Only three of these were instituted in the year 1934, viz: Alabama, Tennessee & Northern Railroad Corporation, December 14, 1934; East St. Louis, Columbia & Waterloo Railroad, October 31, 1934; Kansas City, Kaw Valley & Western Railroad, August 10, 1934. The slow rate of progress toward a reorganization plan of these five major Section 77 cases has called forth comment from at least one student of railway transportation problems. See *Wehle, Railroad Reorganization Under Section 77 of the Bankruptcy Act; New Legislation*

increased cost of coal and other materials, this risk is substantial.[41]

Since the District Court's order is predicated upon the necessity of the injunction until a plan of reorganization can be effected, unless this Court now affords the Reconstruction Finance Corporation the relief to which it is clearly entitled, the latter can have no assurance that it will not suffer irreparable injury.

CONCLUSION

This was an order granted in a summary proceeding for which there was no specific statutory warrant. No facts were shown which would have warranted the order had this been a plenary proceeding. No such power either in plenary or summary proceeding existed prior to the enactment of Section 77 of the Bankruptcy Act; every canon of statutory construction refutes the suggestion that such power can

Suggested, 44 Yale Law J. (1934) 197, 202. Moreover, it is to be noted that under the Act and the special bankruptcy rules promulgated by this Court for practice under it, the debtor or trustee must file in court a classification of creditors and of stockholders before the Commission can hold a public hearing upon a plan of reorganization. In the *Missouri Pacific case* it took the debtor seventeen months to do this; in the *Rock Island case*, seven months; in the *Monon case*, eleven months; and in the *C. & E. I. case*, eighteen months; while on June 5, 1933, a classification order was filed in the *Frisco case*, the plan to which it was related has, for all practical purposes, been abandoned. Of these five major Section 77 proceedings, a serious reorganization plan has been filed with the Interstate Commerce Commission in only one case, the *C. & E. I.* See *Wehle, Railroad Reorganization, supra.*

[41] For an indication of the cumulative effect of these adverse influences upon the earnings of the debtor since the date of the injunction, see petition of the Trustees to the District Court. (Appendix, p. 164.)

be implied from Section 77 or the so-called "omnibus clause" of the Bankruptcy Act (clause 15 of Section 2). The Reconstruction Finance Corporation Act has explicitly given to the petitioner a right to take over and liquidate pledged collateral; this statutory right would continue even if the implication could be indulged as to other creditors.

The economic policy of financing railroads by short-term loans secured by pledge was recognized by the Congress in the Reconstruction Finance Corporation Act, and given specialized administrative control by the Interstate Commerce Commission; that policy can hardly be called into question here. Indeed, support of the policy embodied in the decision of the Circuit Court of Appeals would have such far-reaching and dangerous effects as to perpetuate corporate holdings of securities both in railroad and nonrailroad corporations and to endanger normal commercial processes.

The order was predicated on so-called findings of fact; no evidence in the record appears to support those findings, and, indeed, the public records in the case, and in many instances the record itself, shows these assumptions to have been consistently contrary to fact. The order is assumed to be in aid of a plan of reorganization; it affirmatively appears that no plan of reorganization is in prospect. An order predicated on naked assumptions cannot stand, though these assumptions be called findings of fact.

The supposed distinction between interruption of a remedy and impairment of a right is meaningless in this case.

Realistically, this decision is tantamount to judicial legislation: economic policy is reversed; the settled law is changed without statutory warrant; the right of a pledgee to the position for which he bargained is postponed indefinitely and probably forever; and his position and bargaining power in the ensuing reorganization is impaired, if reorganization ever can be accomplished in a stalemate such as now exists.

There was and is no basis for the decision of the courts below either in the statutory or case law.

The judgments of the Circuit Court of Appeals should be reversed and the causes remanded to the District Court with instructions to vacate the injunctional order (R. 104), and so much of the order (R. 7) approving the debtor's petition under Section 77 as denies to this petitioner the right to dispose of the pledged collateral pursuant to the terms of the debtor's notes held by it.

Respectfully submitted,

J. CRAWFORD BIGGS,
Solicitor General.

STANLEY REED,
General Counsel,
Reconstruction Finance Corporation.

A. A. BERLE, JR.,
Special Counsel,
Reconstruction Finance Corporation.

C. M. CLAY,
Counsel,
Reconstruction Finance Corporation.

JANUARY 1935.

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In the Supreme Court of the United States

OCTOBER TERM, 1934

Nos. 489–490

IN THE MATTER OF THE CHICAGO, ROCK ISLAND and Pacific Railway Company, debtor.

RECONSTRUCTION FINANCE CORPORATION, petitioner

v.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY Company et al., respondents

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ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

APPENDIX TO BRIEF FOR THE RECONSTRUCTION FINANCE CORPORATION

RECONSTRUCTION FINANCE CORPORATION ACT

Approved January 22, 1932, as Amended

[c. 8, sec. 1, 47 Stat. 5,6 as amended by Act of June 21, 1934, c. 692, 48 Stat. 1198 U. S. C. A., Title 15, Sec. 605]

An act to provide emergency financing facilities for financial institutions, to aid in financing agriculture, commerce, and industry, and for other purposes

* * * * *

SECTION 5. To aid in financing agriculture, commerce, and industry, including facilitating the ex-

portation of agriculture and other products, the corporation is authorized and empowered to make loans, upon such terms and conditions not inconsistent with this Act as it may determine, to any bank, savings bank, trust company, building and loan association, insurance company, mortgage-loan company, credit union, Federal land bank, joint-stock land bank, Federal intermediate credit bank, agricultural credit corporation, livestock credit corporation, organized under the laws of any State or of the United States, including loans secured by the assets of any bank, savings bank, or building and loan association that is closed, or in process of liquidation to aid in the reorganization or liquidation of such banks or building and loan associations, upon application of the receiver or liquidating agent of such bank or building and loan association, and any receiver of any national bank is hereby authorized to contract for such loans and to pledge any assets of the bank for securing the same.

All loans made under the foregoing provisions shall be fully and adequately secured. The corporation, under such conditions as it shall prescribe, may take over or provide for the administration and liquidation of any collateral accepted by it as security for such loans.

* * * * *

Each such loan may be made for a period not exceeding three years, and the corporation may from time to time extend the time of payment of any such loan, through renewal, substitution of new obligations, or otherwise, but the time for such payment shall not be extended beyond five years from the date upon which such loan was made originally. The

corporation may make loans under this section at any time prior to the expiration of one year from the date of the enactment hereof; and the President may from time to time postpone such date of expiration for such additional period or periods as he may deem necessary, not to exceed two years from the date of the enactment hereof. Within the foregoing limitations of this section, the corporation may also, upon the approval of the Interstate Commerce Commission, make loans to aid in the temporary financing of railroads and railways engaged in interstate commerce, to railroads and railways in the process of construction, and to receivers of such railroads and railways, when in the opinion of the board of directors of the corporation such railroads or railways are unable to obtain funds upon reasonable terms through banking channels or from the general public and the corporation will be adequately secured. * * *

EMERGENCY RELIEF AND CONSTRUCTION ACT OF 1932

[July 21, 1932, c. 520, 47 Stat. 709,713]

TITLE II. Loans by Reconstruction Finance Corporation:

SEC. 201. (f) All loans made under this section, and all contracts of the character described in paragraph (1) of subsection (a), shall be fully and adequately secured. The corporation, under such conditions as it shall prescribe, may take over or provide for the administration and liquidation of any collateral accepted by it as security for such loans. * * *

EMERGENCY RAILROAD TRANSPORTATION ACT, 1933

[June 16, 1933, c. 91, 48 Stat. 211]

Title I, Sec. 15, 48 Stat. 216 (U. S. C. A., Title 49, Sec. 265), provides:

> The Commission [Interstate Commerce Commission] shall not approve a loan to a carrier under the Reconstruction Finance Corporation Act, as amended, if it is of the opinion that such carrier is in need of financial reorganization in the public interest: *Provided, however*, That the term "carrier" as used in this section shall not include a receiver or trustee. (Parentheses supplied.)

ACT APPROVED JANUARY 20, 1934 C. 3, 48 STAT. 318—CONTINUING THE FUNCTIONS OF THE RECONSTRUCTION FINANCE CORPORATION

An Act to continue the functions of the Reconstruction Finance Corporation, to provide additional funds for the Corporation, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That until February 1, 1935, or such earlier date as the President may fix by proclamation, the Reconstruction Finance Corporation is hereby authorized to continue to perform all functions which it is authorized to perform under existing law, and the liquidation and winding up of its affairs as provided for by section 13 of the Reconstruction Finance Corporation Act, as amended, are hereby postponed during the period that the functions of the Corporation are continued pursuant to this Act.

* * * * *

APPLICATION NO. I SUBMITTED TO INTERSTATE COMMERCE COMMISSION, JUNE 13, 1932.

(184 I. C. C. 597; Finance Docket No. 9384)

Application of The Chicago, Rock Island and Pacific Railway Company for a loan of $10,000,000

(184 I. C. C. 597; Finance Docket No. 9384)

To the RECONSTRUCTION FINANCE CORPORATION:

The Chicago, Rock Island and Pacific Railway Company, hereinafter called the "applicant", applies for a three-year loan of $10,000,000, and shows:

1. The full corporate name of the applicant is The Chicago, Rock Island and Pacific Railway Company. It is a consolidated corporation, formed June 2, 1880, under the laws of Illinois and Iowa. Its charter was extended for a period of fifty years, from June 2, 1930.

2. The name, title, and address of the person with whom conferences of correspondence should be had with respect to this application are Marcus L. Bell, Vice President and General Counsel, The Chicago, Rock Island and Pacific Railway Company, 25 Broad Street, New York, N. Y.

3. Applicant cannot secure the necessary funds, in whole or in part, from any other source. Applicant has made efforts with various banks to borrow funds, and has succeeded in borrowing upon its treasury collateral $8,750,000, notes for which mature August 1, 1932, as more fully set forth in Schedule G hereof. On account of the decline in price of applicant's securities, applicant is unable to secure any further loans. Applicant now has pending before the Railroad Credit Corporation an application for a loan of $4,621,519.50 to enable it to meet its fixed interest

obligations from May 1, 1932, to September 1, 1932, inclusive. A copy of the application to the Railroad Credit Corporation is attached hereto as Exhibit 1. To the extent that applicant obtains funds from the Railroad Credit Corporation pursuant to said application, the loan of $10,000,000 herein applied for may be reduced. If conditions require, applicant will make additional applications to the Railroad Credit Corporation for further loans to enable it to meet its fixed interest obligations maturing subsequent to September 1, 1932.

4. Applicant consents to such examinations as the Corporation may require for the purpose of the act and/or that reports of examinations by constituted authorities may be furnished by such authorities to the Corporation upon request therefor.

5. No agreement has been made, or will be made, by the applicant to pay any person, association, firm, or corporation, either directly or indirectly, any commission or fee for the loan applied for, and no such payments have been made, or will be made, by the applicant.

6. The purpose of the loan and the uses to which it will be applied, and the date or dates on which the funds must be available to the applicant, are as follows:

(a) $4,621,519.50 to meet the following fixed interest obligations:

May 1, 1932

The Chicago, Rock Island and Pacific Railway Company Thirty-Year 4½% Convertible Gold Bonds	$725,130.00
Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortage Gold Bonds (5%)	135,275.00
The Chicago, Rock Island and Pacific Railway Company Short-Term Bank Loans	40,000.00
	900,405.00

June 1, 1932

The Chicago, Rock Island and Pacific Railway Company Equipment Trust (Issue of 1923), Series L, 5%--	$92, 625. 00
The Chicago, Rock Island and Pacific Railway Company Equipment Trust (Issue of 1930), Series Q, 4½%-	284, 310. 00
The Chicago, Rock Island and Pacific Railway Company Short-Term Bank Loans	40, 000. 00
	416, 935. 00

July 1, 1932

The Chicago, Rock Island and Pacific Railway Company General Mortgage 4% Gold Bonds of 1988	1, 231, 620. 00
The Chicago, Rock Island and Pacific Railway Company Equipment Trust (Issue of 1927) Series O	162, 112. 50
Choctaw and Memphis Railroad Company First-Mortgage 5% Gold Bonds	88, 100. 00
Little Rock & Hot Springs Western R. R. Co. First-Mortgage 4% Gold Bonds	9, 072. 00
White & Black River Valley Ry. Co. First-Mortgage 5% Gold Bonds	15, 000. 00
The Chicago, Rock Island and Pacific Railway Company United States of America Equipment Gold Notes, Series I, 6%	48, 600. 00
The Chicago, Rock Island and Pacific Railway Company Short-Term Bank Loans	40, 000. 00
	1, 594, 504. 50

August 1, 1932

The Chicago, Rock Island and Pacific Railway Company, Equipment Trust (Issue of 1925), Series N, 4½%	72, 900. 00
The Chicago, Rock Island and Pacific Railway Company, Equipment Trust (Issue of 1929), Series P, 4½%	184, 275. 00
St. Paul and Kansas City Short Line R. R. Co., First Mortgage 4½% Gold Bonds	225, 000. 00
The Chicago, Rock Island and Pacific Railway Company, Short Term Bank Loans	40, 000. 00
	522, 175. 00

The Chicago, Rock Island and Pacific Railway Company, Secured Gold Bonds, Series A	$900,000.00
Rock Island, Arkansas & Louisiana R. R. Co., First Mortgage 4½% Gold Bonds	247,500.00
The Chicago, Rock Island and Pacific Railway Company, Short Term Bank Loans	40,000.00
	1,187,500.00

(b) $4,375,000.00, representing one-half of the principal of the bank loans shown on Schedule G hereof, on their respective maturity dates.

(c) $1,003,480.50 to apply on account of maturing principal installments of Equipment Trust Obligations. (See Schedule R.)

7. The applicant has no existing financial relations with the United States as to—

(a) Loans made by the applicant:

(b) Claims under Section 209 of the Transportation Act;

(c) Claims on account of deficits under Section 204, Transportation Act;

(d) Payments on account of excess net railway operating income under paragraph 6 of Section 15a of the Interstate Commerce Act. There are no proceedings before the Interstate Commerce Commission involving excess net railway operating income;

(e) And there are no other debits or credits existing between the applicant and the United States other than mail pay, transportation of troops or income tax matters.

8. Applicant desires the entire amount of the loan for the full three-year term applied for, from and after the several dates on which the funds are made available as specified in Section 6 thereof.

9. A statement of the latest valuation placed by the Interstate Commerce Commission upon applicant's property, with the aggregate net property changes to the latest date to which such changes have been reported to the Bureau of Valuation, is attached hereto as Exhibit 9.

10. No subsidiary or affiliated organization of the applicant, or any organization of which the applicant is a subsidiary, has applied for or received loans from the Reconstruction Finance Corporation.

11. The applicant has become a party to the Marshalling and Distributing plan, 1931, of the Railroad Credit Corporation.

12. A comparative statement of the amounts paid to the Railroad Credit Corporation, derived from increases in freight rates under *Ex Parte 103*, is submitted as Exhibit 12.

13. A comparative monthly estimate of the revenues received and expected to be received from the increases in freight rates permitted by *Ex Parte 10s*, is submitted herewith as Exhibit 13.

14. As stated in paragraph 3 hereof, applicant has applied for a loan of $4,621,519.50 from the Railroad Credit Corporation to enable it to meet its fixed interest obligations maturing from May 1, 1932, to September 1, 1932, inclusive, but applicant has not received such loan. Applicant intends to apply for additional loans from the Railroad Credit Corporation to enable it to meet its fixed interest obligations for the remainder of the year 1932, if applicant's necessities so require.

15. A statement of the principal commodities carried and of the ten most important industries served, is attached hereto as Exhibit 15.

16. The particular facts upon which applicant relies as to its present and prospective ability to repay the loan and discharge its obligations in regard thereto, are:

Applicant operates a railway system of approximately 8,000 miles, situated in fourteen states of the Middle West. For the entire period following the termination of Federal Control to the end of the year 1929 applicant earned its fixed charges, the dividends on its preferred stock, and approximately $33,000,000 in excess of all dividends paid on its common stock. In 1930 applicant's earnings were sufficient to pay all of its fixed charges, full dividends on its preferred stock, and have left $5.56 per share available for dividends on its common stock. In 1931 applicant failed by approximately $386,000 to earn its fixed charges; this was due entirely to the general business depression, and applicant has confidence that when normal conditions return it will be able to restore its earnings to the basis existing prior to the depression. Applicant has made reductions in pay, force, and general expenditures as far as is consistent with the proper maintenance and operation of its properties, and is confident that with the material reduction in expenses, even a moderate improvement in business will produce net earnings sufficient to enable applicant to repay the entire loan.

17. A detailed description of the securities to be offered for the loan containing full information and data appropriate thereto is attached hereto as Exhibit 17. Copies of documents relating to such securities are submitted with this application. The applicant's opinion as to the value of the collateral and the basis for that opinion is stated in Exhibit 17.

Schedules A to R are submitted below.

19. Applicant submits herewith—

(a) A certified copy of its articles of consolidation and by-laws, as amended to date;

(b) Preliminary opinion of counsel:

(c) Certified copy of resolutions of applicant's board of directors, adopted April 13, 1932, showing the authority of the officers to execute and deliver the application.

Applicant therefore requests a loan of $10,000,000 for the term and for the purposes specified above, to be made available on the dates indicated. Applicant has very carefully estimated its cash receipts and disbursements, and its requirements for the year are as set forth in Schedule R. If applicant's estimates are borne out by actual results for the remainder of the year 1932, the loan hereby applied for will suffice to enable applicant to go through the year without any additional financing. If conditions should be less favorable than as indicated by applicant's forecast, it will be necessary for applicant to make an additional application for its cash necessities to meet its fixed charges and other obligations maturing after September 1, 1932.

Respectfully submitted.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,

By (Signed) J. E. GORMAN, *President*,

(Signed) CARL NYQUIST, *Secretary*.

SCHEDULE A.—*Statement of Rock Island Lines operated mileage as of February 29, 1932*

	First track	Additional main track	Yard tracks, sidings, etc.	Total
Owned solely by Rock Island Lines	7,702.29	423.92	2,744.19	10,870.40
Owned jointly by Rock Island Lines	9.43	6.36	71.96	87.75
Leased and operated solely by Rock Island Lines	105.97	----------	52.33	158.30
Leased and operated jointly	67.69	----------	34.23	101.92
Operated under trackage rights	456.88	195.81	312.67	965.36
Total, all tracks operated	8,342.26	626.09	3,215.38	12,183.73

Principal termini and other stations of the Rock Island Lines

TERMINI

Chicago, Illinois
Peoria, Illinois
Minneapolis, Minnesota
Denver, Colorado
Colorado Springs, Colorado
Tucumcari, New Mexico
Watertown, South Dakota
Sioux Falls, South Dakota
Keokuk, Iowa
Burlington, Iowa
Eunice, Louisiana
Memphis, Tennessee
St. Louis, Missouri
Teague, Texas
Hot Springs, Arkansas

OTHER STATIONS

Moline, Illinois
Rock Island, Illinois
Davenport, Iowa
Des Moines, Iowa
Cedar Rapids, Iowa
Kansas City, Missouri
St. Joseph, Missouri
St. Paul, Minnesota
Omaha, Nebraska
Wichita, Kansas
Topeka, Kansas
Amarillo, Texas
Fort Worth, Texas
Dallas, Texas
Oklahoma City, Oklahoma
Little Rock, Arkansas

Number of units of locomotives, freight cars, and passenger cars owned and leased, as of February 29, 1932

	Owned	Leased	Total owned and leased
Steam locomotives	1,403	----------	1,403
Other locomotives	1	----------	1
Freight cars	47,893	675	48,568
Passenger cars	1,086	55	1,141

SCHEDULE L.—*Rock Island Lines: Securities of other companies, owned, pledged, and unpledged as of February 29, 1932*

Class of security	Par value			Purpose pledged
	Owned	Unpledged	Pledged	
AFFILIATED COMPANIES				
Stocks:				
Arkansas & Memphis Railway Bridge & Terminal Company:				
Common	$200,000.00	$200.00	$199,800.00	Deposited with Trustee of Mortgage as further assurance of the performance of the operating agreement.
Preferred	550,000.00	550,000.00		
Atchison Union Depot & Railroad Company	9,000.00	9,000.00		
Belt Railway Company of Chicago, The	240,000.00	240,000.00		
Calumet Western Railway Company	108,000.00	108,000.00		
Consolidated Indiana Coal Company	100,000.00	100,000.00		
Crawford County Mining Company	51,000.00	51,000.00		
Denver Union Terminal Railway Company	5,000.00	200.00	4,800.00	Deposited with Trustee of Mortgage as further assurance of the performance of the operating agreement.
Galveston Terminal Railway Company	12,500.00	12,500.00		
Gasconade Railway Construction Company	50,000.00		50,000.00	Deposited with Central Hanover Bank & Trust Co., of New York, Trustee under C. R. I. & P. Ry. Co. First & Refunding Gold Bond Mortgage as additional security.
Gulf Construction Company	25,000.00	25,000.00		
Houston Belt & Terminal Railway Company	3,125.00	100.00	3,025.00	Deposited with Trustee of Mortgage as further assurance of the performance of the operating agreement.
Iowa Transfer Railway Company	16,100.00	16,100.00		
Joliet Union Depot Company	10,000.00	300.00	9,700.00	Deposited with Trustee of Mortgage as further assurance of the performance of the operating agreement.

SCHEDULE L.—*Rock Island Lines: Securities of other companies, owned, pledged, and unpledged as of February 29, 1932*—Continued

Class of security	Par value			Purpose pledged
	Owned	Unpledged	Pledged	
AFFILIATED COMPANIES—continued				
Stocks—Continued.				
Kankakee & Seneca Railroad Company	$5,000.00	$5,000.00		
Kansas City, Rock Island Railway Company	40,000.00	700.00	$39,300.00	Deposited with Central Hanover Bank & Trust Co., of New York, Trustee under C.R.I.&P. Ry. Co. First & Refunding Gold Bond Mortgage as additional security.
Kansas City Terminal Railway Company	183,333.34	500.00	182,833.34	Deposited with Trustee of Mortgage as further assurance of the performance of the operating agreement.
Keokuk Union Depot Company	20,000.00	20,000.00		
Leavenworth Depot & Railroad Company	50,000.00	50,000.00		
Minnesota Transfer Railway Company	7,000.00	7,000.00		
Missouri & Illinois Bridge & Belt Railroad Company	13,000.00	13,000.00		
Peoria & Bureau Valley Railroad Company	10,000.00	10,000.00		
Peoria Terminal Company	499,100.00		499,100.00	Deposited with Central Hanover Bank & Trust Co. of New York, Trustee under C.R.I.&P. Ry. Co. First & Refunding Gold Bond Mortgage, as additional security.
Railway Express Agency, Incorporated	(1)	(1)		
Rock Island-Frisco Terminal Railway Company	300,000.00	300,000.00		
Rock Island Improvement Company	103,000.00	103,000.00		
St. Joseph Union Depot Company	2,000.00	2,000.00		
St. Louis, Rock Island Terminal Railway Company	12,000.00	700.00	11,300.00	Deposited with Central Hanover Bank & Trust Co. of New York, Trustee under C.R.I.&P. Ry. Co. First & Refunding Gold Bond Mortgage, as additional security.

St. Paul Union Depot Company	103,600.00	103,600.00		
Terminal Railroad Association of St. Louis, Mo.	205,800.00	205,800.00		
Trinity & Brazos Valley Railway Company	152,000.00		152,000.00	Deposited with Chase National Bank of New York, Trustee, under a trust agreement dated Dec. 22, 1918, with the Colo. & Southern Ry. Co., pending delivery of one-half of capital stock and funded debt on May 1, 1935, of the T.&B.V. Ry. Co. now Burlington-Rock Island R.R. Co.
Union Terminal Company of Dallas, Texas	6,000.00		6,000.00	Deposited with Trustee of Mortgage as further assurance of the performance of the operating agreement.
Wichita Union Terminal Railway Company	33,333.33	200.00	33,133.33	Deposited with Trustee of Mortgage as further assurance of the performance of the operating agreement.
	3,214,891.67	1,933,900.00	1,280,991.67	
NONAFFILIATED COMPANIES				
American Automobile Corporation	400.00	400.00		
Cedar Rapids Auditorium Company	1,000.00	1,000.00		
Council Bluffs Auditorium Company	2,500.00	2,500.00		
Des Moines Coliseum Company	100.00	100.00		
Exchange Building Company, Memphis, Tenn.	(1)	(1)		
Farmers Co-Operative Telephone Association	30.00	30.00		
Henry County Telephone Company	50.00	50.00		
Kansas City Times Newspaper Company	6,400.00	6,400.00		
Kansas, Oklahoma & Gulf Ry. Co., preferred stock, Series "A"	600.00	600.00		
Kansas, Oklahoma & Gulf Ry. Co., preferred stock, Series "C"	3,900.00	3,900.00		
Memphis Cotton Exchange Realty Company, Common	(2)	(2)		

[1] This Company owns 22 shares out of 1,000 shares issued without par value, carried at a book cost of $2,200.00.
[2] This Company owns 25 shares without par value carried at a book cost of $1.00.
[3] This Company owns 20 shares without par value carried at a book cost of $1.00.

SCHEDULE L.—*Rock Island Lines: Securities of other companies, owned, pledged, and unpledged as of February 29, 1932*—Continued

Class of security	Par value			Purpose pledged
	Owned	Unpledged	Pledged	
NONAFFILIATED COMPANIES—continued				
Stocks—Continued.				
Memphis Cotton Exchange Realty Company, Preferred	$2,000.00	$2,000.00		
Minneapolis & St. Louis R. R. Co., scrip certificate	88.00	88.00		
Nebraska Central Railway Company	99,700.00	99,700.00		
Nebraska Construction Company	270,000.00	270,000.00		
St. Joseph Auditorium Company	5,000.00	5,000.00		
St. Joseph Interstate Fair & Live Stock Association	100.00	100.00		
	391,868.00	391,868.00		
Total, stocks	3,606,759.67	2,325,768.00	$1,280,991.67	
AFFILIATED COMPANIES				
Bonds:				
Kankakee & Seneca Railroad Company, General Mortgage, Series "A", 4½%	352,000.00	352,000.00		
Peoria Railway Terminal Company, First Mortgage, 4%	14,000.00	14,000.00		
Peoria Terminal Company, General Mortgage, 5%	1,000,000.00		1,000,000.00	Deposited with Central Hanover Bank & Trust Co. of New York, Trustee under C., R. I. & P. Ry. Co. First and Refunding Gold Bond Mortgage as additional security.
Rock Island Improvement Company, Blue Island Shops Gold Bonds, 5%	199,000.00	199,000.00		

Rock Island Improvement Company, Cedar Rapids Terminal Gold Bond, 5%.	369,732.99	369,732.99	----------	
Rock Island Improvement Company, Kansas City Terminal Gold Bonds, 5%.	392,838.08	----------	392,838.08	Deposited with Central Hanover Bank & Trust Co. of New York, Trustee under C., R. I. & P. Ry. Co. First and Refunding Gold Bond Mortgage as additional security.
Rock Island Improvement Company, Little Rock Mortgage Gold Bond, 5%.	278,492.49	278,492.49	----------	
Rock Island Improvement Company, Peoria Terminal Gold Bond, 5%.	290,247.86	290,247.86	----------	
Trinity & Brazos Valley Ry. Co., Receivers' Certificates of Indebtedness, 6%.	747,492.51	747,492.51	----------	
Trinity & Brazos Valley Ry. Co., First Mortgage, 5%	4,380,000.00	----------	4,380,000.00	Deposited with Chase National Bank of New York, Trustee under a Trust agreement dated Dec. 23, 1918, with the Colo. & Southern Ry. Co., pending delivery of one-half of capital stock and funded debt on May 1, 1935, of the T. & B. V. Ry. Co., now Burlington-Rock Island R. R. Co.
	8,023,803.93	2,250,965.85	5,772,838.08	
NONAFFILIATED COMPANIES				
City of Liberal, Kansas, Railroad Aid, 5% Bonds	20,000.00	20,000.00	----------	
Guaranty Title & Investment Co., Wichita, Kans., Installment Collateral Trust Bond, 5%.	682.50	682.50	----------	
	20,682.50	20,682.50	----------	
Total, bonds	8,044,486.43	2,271,648.35	5,772,838.08	

SCHEDULE L.—*Rock Island Lines: Securities of other companies, owned, pledged, and unpledged as of February 29, 1932*—Continued

Class of securily	Par value			Purpose pledged
	Owned	Unpledged	Pledged	
AFFILIATED COMPANIES				
Notes:				
Kansas City Terminal Railway Company, Various 5% and 6%	$112,631.74	$112,631.74		
Rock Island-Frisco Terminal Ry. Co., Demand, 5%	8,627.62	8,627.62		
	121,259.36	121,259.36		
NONAFFILIATED COMPANIES				
Crescent Coal Co., note dated Apr 1, 1930, due Dec. 31, 1939, 6%	590,409.08	590,409.08		
Wagner Assets Realization Corporation	43.19	43.19		
	590,452.27	590,452.27		
Total, notes	711,711.63	711,711.63		
NONAFFILIATED COMPANIES				
Miscellaneous:				
Various memberships, etc.	1,851.21	1,851.21		

SCHEDULE I.—*Rock Island Lines: Guaranties and suretyships, as of February 29, 1932*

Principal	Guarantors	Character, extent, and terms of such agreement or obligation	Extent of respondents contingent liability	The contingency whereupon such liability will become actual	Security taken by respondent to protect itself against such contingency
Arkansas & Memphis Railway Bridge and Terminal Company.[1]	C. R. I. & P. Ry., St. L. I. M. & S. Ry., and St. L. S. W. Ry.	$3,290,000 First Mortgage 5% Gold Bonds, due March 1, 1964.	$3,290,000	Failure of principal to pay.	Joint ownership and use of property.
Denver Union Terminal Railway Company.[1]	C. R. I. & P. Ry., C. B. & Q. R. R., C. & S. Ry., A. T. & S. F. Ry., D. & R. G. W. R. R., U. P. R. R.	$4,000,000 First Mortgage 4½% Gold Bonds, due March 1, 1964.	4,000,000	....do....	Do.
Galveston Terminal Railway Company.[1]	C. R. I. & P. Ry. and C. & S. Ry.	$1,051,000 First Mortgage 6% Gold Bonds, due March 1, 1938.	1,051,000	....do....	Do.
Joliet Union Depot Company [1]	C. R. I. & P. Ry., A. T. & S. F. Ry., and C. & A. R. R.	$372,000 First Mortgage 5% Gold Bonds, due June 1, 1944.	372,000	....do....	Do.
Kansas City Terminal Railway Company.[1]	C. R. I. & P. Ry., A. T. & S. F. Ry., C., M., St. P. & P. R. R., C. & A. R. R., U. P. R. R., Wab. Ry., C., B. & Q. R. R., Mo. Pac. Ry., St. L.-S. F. Ry., M.-K.-T. R. R., C. G. W. R. R., and K. C. So. Ry.	$50,000,000 First Mortgage 4% Gold Bonds, due January 1, 1960.	50,000,000	....do....	Do.
Peoria Railway Terminal Company (assumed by the Peoria Terminal Company).[1]	C. R. I. & P. Ry. Co.	$944,000 First Mortgage 4% Gold Bonds, due January 1, 1937.	944,000	....do....	Ownership of all capital stock and outstanding General Mortgage Bonds of Peoria Terminal Co.

[1] Guaranteed as to principal and interest.

SCHEDULE I.—*Rock Island Lines; Guaranties and suretyships, as of February 29, 1932*—Continued

Principal	Guarantors	Character, extent, and terms of such agreement or obligation	Extent of respondents contingent liability	The contingency whereupon such liability will become actual	Security taken by respondent to protect itself against such contingency
Rock Island-Frisco Terminal Railway Company.[1]	C., R. I. & P. Ry. and St. L.-S. F. Ry.	$3,390,000 First Mortgage 4½% Gold Bonds, due July 1, 1957.	$3,390,000	....do....	Joint ownership and use of property.
St. Paul Union Depot Company[1]	C., R. I. & P. Ry.; C., M., St. P. & P. R. R.; C. G. W. R. R.; C., St. P., M. & O. Ry.; No. Pac. Ry.; Gt. No. Ry.; M. & St. L. R. R.; C., B. & Q. R. R.; and M., St. P. & S. S. M. Ry.	$15,000,000 First & Refunding 5% Gold Bonds, due January 1, 1972.	15,000,000	....do....	Do.
Terminal Railroad Association of St. Louis.[1]	C., R. I. & P. Ry.; M.-K.-T. R. R.; C. & E. I. R. R.; Mo. Pac. Ry.; St. L.-S. F. Ry.; C. & A. R. R.; B. & O. S. W. R. R., I. C. R. R.; St. L., I. M. & S. Ry.; Vand. R. R.; C., B. & Q. R. R.; Wab. Ry.; L. & N. R. R.; C., C., C. & St. L. Ry.; Sou. Ry. and St. L. S. W. Ry.	$31,700,000 General Mortgage Sinking Fund Gold Bonds, 4%, due January 1, 1953.	31,700,000	....do....	Do.
Union Terminal Railway Company (Dallas, Texas).[1]	C., R. I. & G. Ry.; G., C. & S. F. Ry.; T. & N. O. Ry.; M.-K.-T. of T. Ry.; St. L.-S. F. & T. Ry.; St. L.-S. W. of T. Ry.; T. & P. Ry.; and Ft. W. & D. C. Ry.	$5,000,000 First Mortgage 5% Gold Bonds, due April 1, 1942.	5,000,000	....do....	Do.

Wichita Union Terminal Railway Company.[1]	C., R. I. & P. Ry.; A., T. & S. F. Ry.; and St. L.-S. F. Ry.	$2,300,000 First Mortgage 4½% Gold Bonds, due November 1, 1941.	2,300,000	....Jo....	Do.
White & Black River Valley Railway Company.[2]	C., R. I. & P. Ry.....	$600,000 First Mortgage 5% Gold Bonds, due June 30, 1980.	[3] 30,000	....do....	Lease and operation of property for 80 years from July 1, 1900, at annual rental of $30,000.

[1] Guaranteed as to principal and interest.
[2] Guaranteed as to interest only.
[3] Interest per year.

* * * * * * *

EXHIBIT 17

Rock Island Lines—Detailed description of the security to be offered for the loan and opinion of applicant as to the value of collateral offered

The Chicago, Rock Island and Gulf Railway Company Extension First Mortgage	$6, 927, 000. 00
The Chicago, Rock Island and Gulf Railway Company Carrollton Branch First Mortgage	331, 000. 00
Kankakee and Seneca R. R. Co. General Mortgage Series "A" Bonds	352, 000. 00
Rock Island and Dardanelle Ry. Co. First Gold Bond Mortgage	100, 000. 00
Rock Island Memphis Terminal Ry. Co. Depot First Mortgage	900, 000. 00
Rock Island Memphis Terminal Ry. Co. Terminal First Mortgage	400, 000. 00
Rock Island Omaha Terminal Ry. Co. First Mortgage Bonds	600, 000. 00
Rock Island Improvement Company Blue Island Shops Mortgage	199, 000. 00
Rock Island Improvement Company Cedar Rapids Terminal Mortgage	369, 732. 99
Rock Island Improvement Company Little Rock Mortgage	278, 492. 49
Rock Island Improvement Company Peoria Terminal Mortgage	290, 247. 86
	10, 747, 473. 34

Applicant is of the opinion that the above securities are worth par. It bases this opinion upon the following facts:

All of the aforesaid collateral consists of first-mortgage bonds of paramount and only lien of subsidiary companies, and covers railroads and terminal properties in important cities, all used by and in the interest of The Chicago, Rock Island and Pacific Railway Company and essential to the operation of its railroad system. In all cases (except the Kankakee & Seneca P R. Co.) the bonds represent the entire issue outstanding, and do not exceed the

actual cost of the respective properties on which they are a lien; and in most cases are substantially less in amount than such cost.

* * * * * * *

EXHIBIT 19b

Preliminary Opinion of Counsel

NEW YORK, MAY 2, 1932.

To the Reconstruction Finance Corporation.

GENTLEMEN: The undersigned is General Counsel of The Chicago, Rock Island and Pacific Railway Company, applicant herein. He is familiar with the corporate powers of the applicant and is of the opinion that applicant is authorized to apply for the loan herein stated, and that when proper corporate action has been taken and the obligations executed, and security delivered as contemplated by the application, such obligations will constitute the valid and subsisting obligations of the applicant duly secured by a first and paramount lien on the same. He is also familiar with the collateral specified in Exhibit 17 hereto, and with the corporate procedure relating to its issue, execution, and delivery, and with the lien which the same purports to have. He is of the opinion that each of the said obligations specified in Exhibit 17 is a valid and subsisting obligation of the maker thereof and constitutes a first and paramount lien on the property by which it purports to be secured.

Respectfully submitted.

MARCUS L. BELL,

General Counsel, The Chicago, Rock Island and Pacific Railway Company.

EXHIBIT 19c

Certified Copy of Resolution Adopted by the Board of Directors The Chicago, Rock Island and Pacific Railway Company at Meeting Held April 13, 1932

The Chairman stated that, on account of the continued decline in gross revenues, it would be necessary to provide funds during the year 1932 from outside sources, to enable the Company to meet maturing principal and interest obligations and to pay off a portion of its bank loans now aggregating $8,750,000; and that, on account of the constant decline in the bond market and the general business situation, it would be difficult, if not impossible, to obtain such funds, or any part thereof, through additional bank loans.

After discussion, it was,

On motion,

Resolved, That application be made, on behalf of this Company, to the Reconstruction Finance Corporation for a loan or loans in an amount not exceeding in the aggregate $10,000,000.00, to provide funds to enable the Company to meet its maturing principal and interest obligations up to and including September 1932, and to pay one-half of its present bank loans; that J. E. Gorman, President, or Marcus L. Bell, Vice President, or either of them, be and he hereby is authorized and directed to make, sign, verify, and file such application, on behalf of this Company and under its corporate seal, and such application as may be necessary to secure the approval of the Interstate Commerce Commission to such loan or loans, and to execute and deliver all agreements, documents, or other instruments, and to do and take all other acts and proceedings, on behalf of this Company, that may be necessary or

required in order to obtain such loan or loans. Such application shall include an offer to pledge as collateral for such loan or loans any securities now or that hereafter may be in the Company's treasury, upon such terms and conditions as may be approved by the Reconstruction Finance Corporation and by the Interstate Commerce Commission.

STATE OF ILLINOIS,
County of Cook, ss:

I, Carl Nyquist, Secretary of The Chicago, Rock Island and Pacific Railway Company, do hereby certify that the above and foregoing is a full, true, and complete extract from minutes of meeting of the Board of Directors of said Company, duly called and held in the City of New York, April 13, 1932, at which meeting a quorum of said directors was present and acted, as fully appears of record in my said office.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of said The Chicago, Rock Island and Pacific Railway Company, at Chicago, Illinois, this 2nd day of May, A. D. 1932.

CARL NYQUIST,
Secretary The Chicago, Rock Island and Pacific Railway Co.

STATE OF ILLINOIS,
County of Cook, ss:

J. E. GORMAN makes oath and says that he is the President of The Chicago, Rock Island and Pacific Railway Company; that he has carefully examined each and all of the statements contained in the foregoing application; that they are true and correct to the best of his knowledge and belief; that the foregoing application is made with the approval and at the direction of the board of directors of said applicant, as appears by resolution adopted at a meeting

of said board, a certified copy of which is attached to the said application, said meeting having been held at the City of New York, N. Y., on the 13th day of April, 1932, and that he is the person who has been authorized by said board to execute the foregoing papers and any others which may be required in connection with the loan.

J. E. GORMAN.

Subscribed and sworn to before me, a Notary Public in and for the State and County above-named, this second day of May 1932.

W. J. GEDL.

My commission expires November 15, 1933.

REPORT AND CERTIFICATE OF INTERSTATE COMMERCE COMMISSION APPROVING LOAN OF $10,000,000 FROM RECONSTRUCTION FINANCE CORPORATION TO THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY

(184 I. C. C. 597; Finance Docket No. 9384)

Interstate Commerce Commission

Finance Docket No. 9384

The Chicago, Rock Island & Pacific Railway Company Reconstruction Loan

Submitted June 13, 1932. Decided June 15, 1932

Upon application, a loan of $10,000,000 to the Chicago, Rock Island & Pacific Railway Company by the Reconstruction Finance Corporation approved. Terms prescribed.

M. L. Bell, Thos. P. Littlepage, and *A. Rea Williams* for applicant.

Division 4, Commissioners Meyer, Eastman, Brainerd and Mahaffie.

By Division 4:

The Chicago, Rock Island and Pacific Railway Company, a railroad engaged in interstate commerce, and the principal carrier in a system of railroads known as the "Rock Island Lines", on May 5, 1932, submitted to us for our approval copies of an application to Reconstruction Finance Corporation, hereinafter referred to as the corporation, for a loan under the provisions of section 5 of the Reconstruction Finance Corporation Act.[1] Pursuant to the requirements of that act we have made due investigation of the application. The application was supplemented on May 19, May 24, and May 31, 1932, and as thus supplemented will be referred to hereinafter as the application. Statistical and other data which follow relate to the system, except where otherwise indicated.

THE APPLICATION

The applicant requests a loan of $10,000,000 for a term of three years from the respective dates of the several advances thereon.

The purposes of the loan and the dates upon which funds are required were stated to be as follows:

(a) To meet the payment of interest due on the obligations and on the dates shown below..... $4,621,519.50

[1] An act to provide emergency financing facilities for financial institutions, to aid in financing agriculture, commerce, and industry, and for other purposes. Approved January 22, 1932.

MAY 1, 1932

Applicant's 4½ percent convertible gold bonds	$725, 130. 00
Choctaw, Oklahoma & Gulf Railroad Company, 5 percent consolidated mortgage bonds	135, 275. 00
Applicant's short-term bank loans	40, 000. 00
	900, 405. 00

JUNE 1, 1932

Applicant's 5 percent, series L, equipment-trust notes	$92, 625. 00
Applicant's 4½ percent, Series Q, equipment-trust notes	284, 310. 00
Applicant's short-term bank loans	40, 000. 00
	416, 935. 00

JULY 1, 1932

Applicant's 4 percent, general-mortgage gold bonds	1, 231, 620. 00
Applicant's 4½ percent, series O, equipment-trust notes	162, 112. 50
Choctaw & Memphis Railroad Company, 5 percent first-mortgage bonds	88, 100. 00
Little Rock & Hot Springs Western Railroad Company, 4 percent first-mortgage bonds	9, 072. 00
White & Black River Valley Railway Company, 5 percent first-mortgage bonds	15, 000. 00
Applicant's 6 percent, series I, equipment-trust notes, due July 15	48, 600. 00
Applicant's short-term bank loans	40, 000. 00
	1, 594, 504. 50

AUGUST 1, 1932

Applicant's 4½ percent, series N, equipment-trust notes	72, 900. 00
Applicant's 4½ percent, series P, equipment trust notes	184, 275. 00

AUGUST 1, 1932—continued

St. Paul & Kansas City Short Line Railroad Company, 4½ percent, first-mortgage bonds	$225,000.00	
Applicant's short-term bank loans	40,000.00	
	522,175.00	

SEPTEMBER 1, 1932

Applicant's 4½ percent, series A, secured gold bonds	900,000.00	
Rock Island, Arkansas & Louisiana Railroad Company, 4½ percent, first-mortgage bonds	247,500.00	
Applicant's short-term bank loans	40,000.00	
	1,187,500.00	
(b) To meet one-half of the principal of the following bank loans on the due dates thereof		$4,375,000.00

MAY 19, 1932

First National Bank of Chicago	500,000.00	

AUGUST 1, 1932

Chase National Bank, New York	4,000,000.00	
New York Trust Company, New York	1,000,000.00	
Continental Illinois Bank & Trust Company, Chicago	2,500,000.00	
Harris Trust & Savings Bank, Chicago	500,000.00	
Mississippi Valley Trust Company, St. Louis, Mo	250,000.00	
	8,750,000.00	
(c) To meet, in part, principal of equipment-trust obligations maturing on various dates as indicated		1,003,480.50

JUNE 1, 1932

Series L	$285,000.00	
Series Q	468,000.00	
	753,000.00	

JULY 1, 1932		
Series O		$655,000.00
AUGUST 1, 1932		
Series N	360,000.00	
Series P	630,000.00	
	990,000.00	
Total loan		$10,000,000.00

One-half of the note due to the First National Bank of Chicago on May 19 has now been renewed to mature on August 1. The remainder of this note was discharged by the applicant at maturity. That part of the loan for 50 percent of the note so paid and the interest maturities in May is desired to replenish treasury cash expended for these purposes. Subsequent to the filing of the application the applicant advised that it would require at least $3,500,000 on or before July 1, instead of the amount shown in its original application.

If the proceeds of that part of the proposed loan to meet the principal of equipment-trust obligations be applied to such of those maturities as fall due in July and in August, a recapitulation of the applicant's requirements, assembled by dates is as follows:

May 1, interest		$900,405
May 19, bank loan		250,000
June 1, interest		416,935
July 1, interest	$1,594,504.50	
equipment notes	338,155.50	
		1,932,660
August 1, interest	522,175.00	
bank loans	4,125,000.00	
equipment notes	665,325.00	
		5,312,500
September 1, interest		1,187,500
Total		10,000,000

The applicant states that no agreement has been or will be made by it to pay any person, association, firm or corporation, either directly or indirectly, any commission or fee for or in connection with the loan applied for, and no such payments have or will be made by it.

The applicant also states it is unable to secure the needed funds, in whole or in part, from any banking source on account of the decline in the price of the applicant's securities which might be pledged therefor. It is our view that the question of the applicant's ability to procure funds through banking channels or from the general public is one committed by section 5 of the Reconstruction Finance Corporation Act primarily to the corporation.

The applicant shows that in the period of the last year it has borrowed upon its treasury collateral $8,750,000, and thereby reduced its collateral resources having established market value to a relatively small amount, but that it does have a considerable quantity of other securities which are valuable. The applicant is eligible to borrow from the Railroad Credit Corporation, an organization created to carry out the purposes of our decisions in *Fifteen Per Cent Case, 1931*, 178 I. C. C. 539, 179 I. C. C. 215, under its "Marshalling and Distributing Plan, 1931", but there is no other source of credit available to it.

The applicant has filed with the Railroad Credit Corporation an application for a loan of $4,621,519.50 to enable it to meet the fixed interest obligations due from May 1 to September 1, 1932, covered by the application here under consideration, and intends to apply for other loans to meet other interest maturities

after September 1 if conditions should require. The applicant is not inclined to press that application, and no loan by the corporation has been approved. While, to the extent that loans from that source may be obtained, the amount required of the Reconstruction Finance Corporation will be less, it is our view that we must now consider the application before us with a view to the possibility that the Reconstruction Finance Corporation will be the only source to which the applicant may look for substantial assistance during the remainder of the current year.

There are no unsettled financial transactions between the applicant and the United States. The former, however, has heretofore been before us as a borrower from the United States. In *Loan to Chicago, Rock Island & Pacific Ry.*, 65 I. C. C. 224 and 371, and 67 I. C. C. 569, we approved loans to the applicant of $2,000,000 and $7,862,000, respectively, under the provisions of section 210 of the transportation act, 1920, as amended, and of $1,568,540 to the National Railway Service Corporation for the benefit of, and payable serially with funds furnished by, the applicant. All of these loans were paid in full before maturity.

Transportation properties and operations

The applicant has also applied to us for authority to consolidate into its own line its various subsidiary and lessor lines. These subsidiaries and/or lessors consist of the St. Paul & Kansas City Short Line Railroad Company; Choctaw, Oklahoma & Gulf Railroad Company; Rock Island, Arkansas & Louisiana Railroad Company; Chicago, Rock Island & Gulf Railroad Company; Morris Terminal Railway Company; Peoria Terminal Company; Peoria, Hanna

City & Western Railway Company; Rock Island & Dardanelle Railway Company; Rock Island, Stuttgart & Southern Railway Company; Rock Island, Memphis Terminal Railway Company; and Rock Island Omaha Termial Railway Company. This matter has not yet been considered by us.

The applicant, over its own rails or those of its subsidiaries, enters such important Mississippi River gateways as Clinton, Davenport, and Keokuk, Iowa; St. Paul, Minnesota; St. Louis, Mo.; and Memphis, Tenn. It also enters the traffic centers at Chicago and Peoria, Ill; Cedar Rapids, Des Moines, and Council Bluffs, Iowa; St. Joseph and Kansas City, Mo.; Topeka and Wichita, Kans.; Little Rock, Ark.; Oklahoma City, Okla.; Omaha and Lincoln, Nebr.; Watertown and Sioux Falls, S. Dak.; Colorado Springs, Colo.; Tucumcari, N. Mex.; and Fort Worth and Dallas, Tex. Over a partially controlled subsidiary it has indirect access to the gulf ports of Houston and Galveston, Tex., and by trackage rights reaches Denver, Colo., and Minneapolis, Minn. It owns, or controls, a network of rail lines connecting these points and generally following the trends of traffic in the Middle West, though not always by the shortest route. It therefore lies in the channels of commerce in such a way that, with its numerous feeders, it must enjoy a reasonable participation in the general movement of freight and passenger traffic. Much of its property is in developing territory, and with any favorable change in the present trend of general business conditions it may reasonably be expected to show an upward trend in its earnings.

Most of the applicant's important main line mileage is laid with 80- to 110-pound rail, on treated

ties in a well ballasted roadbed. On December 31, 1931, the applicant owned 3,286.04 miles of main line, with some second, third, and fourth main track, and requisite industrial, yard, and side tracks. It owned 2,039.25 miles of branch lines with some second track and requisite industrial yard and side tracks appurtenant thereto. It operated 1,833.55 miles of main line leased from affiliated companies. Most of this mileage and the necessary second, industrial, yard, and side tracks was owned by companies controlled by the applicant. An additional 725.35 miles of main track were owned and operated as part of the system by controlled subsidiaries. In the foregoing classification there is a total of 7,884.19 miles of first main track, 403.55 of second main track, 14.97 of third main track, 2.90 of fourth main track, 410.06 of industrial track, and 2,406.39 of yard track and sidings. The applicant also owns a small mileage which it operates jointly with other companies, and operates under trackage rights over additional mileage owned by others.

On February 29, 1932, the applicant owned 1,494 locomotives, 47,893 freight-train cars, 1,086 passenger-train cars, and leased 730 additional units of freight and passenger equipment.

In the approximate order of their importance as producers of revenue in 1931, the principal commodities transported by the applicant and its system lines were petroleum oils, refined and all other gasolines, wheat, bituminous coal, cattle and calves, hogs, gravel and sand, wheat flour, lumber, shingles and lath, and building cement. Also ranking high in importance were fresh vegetables, oranges, and grapefruit. Under conditions more normal than existed in 1931, shipments of passenger automobiles, iron

and steel pipe and fittings, largely for oil-well development, and crude petroleum were prominent among the first ten producers of revenue.

Necessities of the Applicant

Of the interest maturities to be met by the applicant, those of the Choctaw which occurred in May were assumed by the applicant under the terms of a lease dated March 24, 1904, by virtue of which the Choctaw became a part of the Rock Island system; those of the Choctaw & Memphis Railroad Company had previously become an obligation of the Choctaw, which is guarantor of the interest under a lease of the former; those of the Little Rock & Hot Springs Western represent the interest upon $453,600 of the bonds under a mortgage subject to which the applicant purchased 25.81 miles of the railroad of the latter. The total issue of these last-named bonds outstanding is $1,140,000, the remaining $686,400 of the issue being guaranteed by the Missouri Pacific Railroad Company. The interest on the mortgage of the White & Black River Valley Railway Company also is guaranteed by the Choctaw under a lease dated July 1, 1900, and guaranteed by the applicant under its lease of the Choctaw of 1904.

The interest on the mortgage of the Short Line is guaranteed unconditionally by the applicant as to principal and interest under the terms of a lease of the property of the Short Line by the applicant effective November 1, 1913. The interest on the mortgage of the Louisiana also is guaranteed unconditionally under a lease to the applicant by the Louisiana of its property dated June 1, 1906. The remaining maturities for which the loan is desired are the direct obligations of the applicant. The interest on short-

term bank loans is a monthly obligation. The monthly interest fluctuates over or under $40,000 per month, but that is substantially the monthly amount of such obligation over a period of months.

The applicant estimated it would have a cash balance on June 1 of $1,597,000, although for a carrier which such extensive operations the balance is comparatively small. During June the applicant estimates that its necessary expenditures will so exceed its receipts as to cause a deficit in cash by the end of that month of $1,241,866. In the first part of July, however, there will exist a large demand for cash from sources other than operations although revenues during the remainder of that month are expected nearly to offset the early payments. From August until the end of 1932 the applicant's deficit in cash is shown to be cumulative. The cumulative effect of the demand for cash in excess of expected cash receipts, estimated according to the trend of recent traffic statistics, will more than consume the cash which was on hand at the close of May, together with the proceeds of the proposed loan, by the end of October. During October, November, and December other maturities of interest, equipment obligations, and other debts will occur which, even with the aid of the loan sought, would as now estimated, leave the carrier a cash deficit of $5,469,000 at the end of December. The need for the loan sought is clearly shown.

Security

As collateral security for the loan the applicant offers the following bonds:

Description	Principal amount
Chicago, Rock Island & Gulf Railway Company extension first mortgage	$6, 927, 000. 00
Chicago, Rock Island & Gulf Railway Company, Carrollton branch first mortgage	331, 000. 00
Kankakee & Seneca Railroad Company first mortgage, series A	352, 000. 00
Rock Island & Dardanelle Railway Company first mortgage	100, 000. 00
Rock Island Memphis Terminal Railway Company Depot first mortgage	900, 000. 00
Rock Island Memphis Terminal Railway Company Terminal first mortgage	400, 000. 00
Rock Island Omaha Terminal Railway Company first mortgage	600, 000. 00
Rock Island Improvement Company Blue Island Shops mortgage	199, 000. 00
Rock Island Improvement Company Cedar Rapids Terminal mortgage	369, 732. 90
Rock Island Improvement Company Little Rock mortgage	278, 492. 49
Rock Island Improvement Company Peoria Terminal mortgage	290, 247. 86
Total	10, 747, 473. 34

The applicant states that all of the aforesaid collateral consists of first-mortgage bonds representing the only existing liens upon railroad and terminal properties in important cities used by and in the interest of the applicant and essential to the operation of its railroad system. In all instances, except those of the Gulf and of the Kankakee & Seneca Railway Company, the bonds offered constitute the entire issue outstanding.

The extension first mortgage of the Gulf covers that portion of the carrier's property between Amarillo, Tex., and Hitchland, on the Texas-Oklahoma line, a distance of 107.47 miles. This line connects with the main line of the applicant from Tucumcari,

N. Mex., to Kansas City, Mo., at Liberal, Kans., and with the main line of the applicant from Memphis, Tenn., to Tucumcari, N. Mex., at Amarillo.

The Carrollton branch mortgage of the Gulf is a first lien upon 11.20 miles of the applicant's line between Irving and Carrollton, Tex., on the extension from Fort Worth to Dallas, and is part of the line giving the applicant a through route to Houston and Galveston.

In *Chicago, R. I. & P. Co.*, 24 Val. Rep. 709, we considered the value for rate-making purposes of all the property of the applicant and that of its subsidiaries. Therein we found such value of that property of the Gulf owned and used for common-carrier purposes to be $13,212,305; that owned, but not used, to be $620,101; and that owned which we classified as noncarrier to be $777,935. This was as of June 30, 1915. Since that date additions and betterments to the Gulf's property have been reported to us costing $10,879,380. The sum of these items is $25,489,721. Bonds of the Gulf now outstanding, including those offered for pledge, amount to $16,583,000.

The general mortgage of the Kankakee & Seneca is a first and only lien upon the entire property of that carrier, which operates 42.19 miles of railroad between Kankakee and Seneca, Ill., at which latter point it connects with the applicant's railroad. At present the line is being operated by the applicant as agent. It is controlled jointly by the applicant and the Cleveland, Cincinnati, Chicago & St. Louis Railway Company. The bonds offered represent half of the total issue of $704,000. No interest has been paid on these bonds by special arrangement between the owners and the issuing carrier.

The property of this carrier was valued by us for rate-making purposes as of June 30, 1915, in Kankakee & Seneca R. R. Co., 114 I. C. C. 455. We found such value for its owned property, including a small amount of land classified as noncarrier, to be $810,955. Since valuation date the carrier reported to us additions and betterments to the property so valued costing $86,704. If this amount be added to the value found the sum becomes $897,659.

The first mortgage of the Dardanelle matures December 1, 1934, and is the only lien upon 13.92 miles of railroad lying between Ola, on the main line of the applicant from Memphis, Tenn., to Tucumcari, N. Mex., and Dardanelle, both in the State of Arkansas. This is a branch-line mortgage. The property covered thereby was valued by us for rate-making purposes as of June 30, 1915, at $216,000. Since that date additions to the property costing a net sum of $18,329 have been reported to us.

The mortgages of the Memphis Terminal are liens against all the freight terminals of the applicant located in Memphis. This terminal property embraces 18.45 acres of land and improvements in Memphis, which point is reached over the tracks of the Arkansas & Memphis Railway Bridge & Terminal Company, of which the applicant is one of three proprietary owners. The owned and used property of the Memphis Terminal was valued by us for rate-making purposes as of June 15, 1915, at $700,000. Since that date net additions thereto aggregating $121,870 are reported to have been made. If these amounts be added together the sum is $821,870, which, however, is not the whole of the security for the $1,300,000 of terminal and depot bonds offered as part security for the loan.

The $400,000 of terminal bonds appear to constitute a lien against a substantial amount of property conveyed by the Memphis Terminal to the Arkansas & Memphis Railway Bridge & Terminal Railway Company, leased back to the vendor, and reported by us as property used but not owned by the applicant valued at $230,828 as of June 30, 1915. Subsequent net additions are not separately reported to us at this time.

The Omaha Terminal property, which underlies the Rock Island Omaha Terminal mortgage, consists of 10.76 acres of land improved for and used by the applicant as its freight terminal for Omaha, Nebraska. We have made no valuation of this property, but its cost, including improvements to December 31, 1931, as reported to us is $977,498.

The Rock Island Improvement Company's Blue Island shops mortgage under which the $199,000 of bonds was issued, is a lien against the property on which the applicant's shops and shop tracks are located at Blue Island, Ill., embracing 24.34 acres of land, all of which is utilized. That company's Cedar Rapids Terminal mortgage is a lien upon 9 acres of land in Cedar Rapids, Iowa, used as a location for the applicant's local freight house and tracks leading thereto and for various industrial concerns occupying portions of the land under lease. The property under the Little Rock mortgage of the Improvement Company embraces an industrial area of 422.87 acres in the southern outskirts of Little Rock, Ark., abutted by the applicant's main line. The Peoria Terminal mortgage has a lien against 5.83 acres adjacent to the applicant's main track in the City of Peoria, Ill., almost completely occupied by its freight depot and local delivery and assembly

tracks. In our valuation of the property of the applicant we found the value for rate-making purposes of the property of the Improvement Company leased to the applicant to be $8,228,000. Subsequent net additions to this leased property are reported to have cost an aggregate sum of $2,492,544.

There are now pledged or committed to be pledged as collateral security for $8,500,000 of bank loans, of which it is proposed to discharge 50 percent at maturity on August 1st with the proceeds of the loan, $12,390,000 of the applicant's first and refunding mortgage 4-percent bonds of 1934 and $17,608,000 of St. Paul & Kansas City Short-Line Railroad Company first mortgage 4½-percent bonds of 1941. The applicant makes no specific offer of the pledge of any of these securities. Our action herein will be conditioned upon the pledge with the corporation of one-half of those bonds upon the payment with the aid of the loan of a like proportion of the obligations for which they constitute the collateral security, and the extension of the remaining 50 percent of such obligations for terms not less than the term of the loan which we conditionally approve.

None of the securities which are offered as collateral for the loan are dealt in on any exchange, and there is, therefore, no established market value for them. The applicant's first and refunding mortgage bonds, however, since January 1, 1932, have been dealt in at prices ranging between 20 and 73. They sold at about 30 on June 8th. The Short-line bonds which are not actively dealt in, in the same period, ranged from 35, at which the last sale brought to our attention was made, to 60.

The applicant's first and refunding mortgage is a direct first lien upon 1,290 miles of road, and, subject

to other mortgages, is a lien upon 5,552 additional miles. Under this mortgage $104,470,000 of bonds are shown to have been outstanding in the hands of the public on December 31, 1931, and $56,582,000 to have been pledged as collateral for other issues and/or short-term loans.

The first mortgage of the Short Line is a direct first lien on 345 miles of road. Under this mortgage $16,521,265 of bonds were reported by the issuing company to have been outstanding on December 31, 1931, of which amount the applicant held $6,540,000, leaving $9,981,265 outstanding in the hands of the public. On January 27, 1932, in *St. Paul & K. C. S. L. R. Co. bonds*, 180 I. C. C. 309, we authorized the issue of $11,068,000 additional bonds under this mortgage, all of which passed into the possession of the applicant and are a part of the total of $17,608,000 of such bonds now pledged for bank loans. The value for rate-making purposes of the property of the Short Line and of the Keokuk & Des Moines Railway Company, subsequently merged, was found by us to be $11,880,000 as of December 15, 1915. Additions to these properties having a net cost of $11,787,742 are reported to have been made between the date of valuation and December 31, 1931.

In the 11-year period 1921–1931, the average of the results of operations was as follows:

Railway operating revenue	$131, 402, 468
Railway operating expenses	100, 321, 437
Railway operating ratio	(76. 3)
Net railway operating income	19, 014, 514
Nonoperating income	1, 030, 152
Gross income	20, 044, 666
Deductions from gross income (excluding interest)	459, 534
Available for interest	19, 585, 132
Interest	11, 683, 504

Thus the earnings have been 1.68 times the requirements for interest, and after dividends on preferred stock there remained average earnings of $6.05 per share on the applicant's common stock. During the period 1921 to 1929, inclusive, the carrier transferred approximately $33,000,000 from income to its profit and loss account after having paid dividends on preferred stock during each of those years and on common stock during the last three. The applicant's income declined in 1930 when general business began to subside and it failed by approximately $1,000,000 to earn dividends on its preferred and common stock. In 1931 it was able to meet its entire interest requirements from earnings with the aid of a comparatively small part of the accruals for depreciation. The record shows the applicant has expended substantial sums for both maintenance of way and equipment so that the property is now in safe condition for efficient operation. The condition of the property is reported to be such that maintenance expenses could be reduced considerably below the average of the 11-year period ended with 1931 without harmful result to the property or impairing the applicant's ability to meet the demands upon it for transportation service.

One reason for the applicant's present requirement for cash has been its effort to maintain normal business conditions by extensive equipment purchases in 1931. During that year it contracted to make the largest single equipment purchase ever made in its experience, which involved outlays of cash or commitments for the future aggregating $18,729,370.

Including all the property in the system of the applicant we have found the value for rate-making

purposes in *Chicago, R. I. & P. Ry. Co., supra*, to be $342,459,107. This total included approximately $750,000 of property belonging to carriers not wholly identified with the system and $8,809,983 of working capital. The value found was as of June 30, 1915, and since that date up to December 31, 1931, there have been reported to us net additions to the property costing $171,189,896. If the working capital allowance and property not owned by system lines be excluded from the final value as found and the reported additions included, the total becomes $504,090,000.

Excluding overlapping stocks and bonds of subsidiaries which are owned by carriers within the system, the system's capital structure, which may be compared to the foregoing total for property, consisted of $130,799,212 of capital stock and $317,372,895 of unmatured funded debt on December 31, 1931.

In 1927 and again in 1930 the applicant was able to negotiate extensive issues of securities aggregating $72,000,000. It confidently asserts that with a return of annual gross revenues to approximately $100,000,000, and with a continuance of economies effected since 1929, and the realization of the benefits of further economies expected to result from the proposed consolidation, it will be assured of sufficient net revenue to meet all necessary expenses, including present interest requirements and interest on the loan. In 1931 its gross revenues were $99,069,563 and the deficit after interest $386,545. The applicant estimates the gross revenues of a normal year would approximate $129,000,000. Its gross revenues have exceeded that sum in each of the last 11 years, except in 1922, 1930, and 1931, and in only 1931 were the revenues so low that applicant was unable to meet its

entire fixed charges out of its net income. Under all the circumstances, the applicant's existing acute financial situation must be viewed as temporary condition.

Conclusions

Upon investigation of the application, we conclude:

1. That we should approve a loan of $10,000,000 to The Chicago, Rock Island and Pacific Railway Company by the Reconstruction Finance Corporation, for a term to expire not later than March 1, 1934, to be advanced in installments as follows:

On or before June 15, 1932	$1, 500, 000
On or before July 1, 1932	2, 000, 000
On or before Aug. 1, 1932	5, 312, 500
On or before Sept. 1, 1932	1, 187, 500

the proceeds of such loan to be devoted to the purposes indicated in this report.

2. That the Reconstruction Finance Corporation will be adequately secured by the pledge of the following securities:

a. The Chicago, Rock Island & Pacific Railway Company first and refunding mortgage 4-percent bonds of 1934	$6, 435, 000. 00
b. St. Paul & Kansas City Short Line Railroad Company first-mortgage 4½-percent bonds of 1941	9, 154, 000. 00
c. The Chicago, Rock Island & Gulf Railway Company extension first-mortgage 5-percent bonds of 1960	6, 927, 000. 00
d. The Chicago, Rock Island & Gulf Railway Company Carrollton branch first-mortgage 6-percent bonds of 1937	331, 000. 00
e. Kankakee & Seneca Railroad Company general-mortgage, Series A, 4½-percent bonds of 2020	352, 000. 00
f. Rock Island & Dardanelle Railway Company first-mortgage 5-percent bonds of 1934	100, 000. 00
g. Rock Island Memphis Terminal Railway Company Depot first-mortgage 5-percent bonds	900, 000. 00
h. Rock Island Memphis Terminal Railway Company Terminal first-mortgage 5-percent bonds	400, 000. 00
i. Rock Island Omaha Terminal Railway Company first-mortgage 5-percent bonds	600, 000. 00

j. Rock Island Improvement Company Blue Island Shops mortgage bonds	$199,000.00
k. Rock Island Improvement Company Cedar Rapids Terminal mortgage bonds	369,732.99
l. Rock Island Improvement Company Little Rock mortgage 5-percent bonds	278,492.49
m. Rock Island Improvement Company Peoria Terminal mortgage 5-percent bonds	296,247.86

3. That, before any advance upon the loan is made, the applicant should deposit with the corporation an agreement of the holders of those obligations, or other evidence satisfactory to the corporation, that 50 percent of the bank loans herein described will be extended to a maturity date not earlier than the maturity date of the loan herein conditionally approved; and

4. That the applicant should be required to report to the Reconstruction Finance Corporation and this commission, within 30 days from the making of the several parts of such loan, the expenditure of the proceeds thereof for the purposes for which the loan is authorized.

An appropriate certificate of approval will be issued.

[Unreported]

Certificate

At a session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 15th day of June, A. D. 1932

Finance Docket No. 9384

The Chicago, Rock Island & Pacific Railway Company Reconstruction Loan

Investigation of the matters and things involved in the application in this proceeding having been had, and said division having, on the date hereof,

made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is hereby certified, That this commission approves a loan of $10,000,000 to The Chicago, Rock Island and Pacific Railway Company by the Reconstruction Finance Corporation, to mature not later than March 1, 1934, under the provisions of the Reconstruction Finance Corporation Act and pursuant to the application filed in said proceeding, such loan to be advanced to said company in installments as follows:

On or before June 15, 1932	$1,500,000
On or before July 1, 1932	2,000,000
On or before Aug. 1, 1932	5,312,500
On or before Sept. 1, 1932	1,187,500

subject, however, to the following conditions:

1. That The Chicago, Rock Island and Pacific Railway Company pledge with the Reconstruction Finance Corporation as collateral security for said loan the following-described securities:

a. The Chicago, Rock Island and Pacific Railway Company first and refunding mortgage 4-percent bonds of 1934	$6,435,000.00
b. St. Paul & Kansas City Short Line Railroad Company first-mortgage 4½-percent bonds of 1941	9,154,000.00
c. The Chicago, Rock Island & Gulf Railway Company extension first-mortgage 5-percent bonds of 1960	6,927,000.00
d. The Chicago, Rock Island & Gulf Railway Company Carrollton branch first-mortgage 6-percent bonds of 1937	331,000.00
e. Kankakee & Seneca Railroad Company general-mortgage, series A, 4½-percent bonds of 2020	352,000.00
f. Rock Island & Dardanelle Railway Company first-mortgage 5-percent bonds of 1934	100,000.00
g. Rock Island Memphis Terminal Railway Company Depot first-mortgage 5-percent bonds of 1934	900,000.00
h. Rock Island Memphis Terminal Railway Company Terminal first-mortgage 5-percent bonds of 1934	400,000.00

i. Rock Island Omaha Terminal Railway Company first-mortgage 5-percent bonds of 1934	$600,000.00
j. Rock Island Improvement Company Blue Island Shops mortgage 5-percent bonds of 1934	199,000.00
k. Rock Island Improvement Company Cedar Rapids Terminal mortgage 5-percent bonds	369,732.99
l. Rock Island Improvement Company Little Rock mortgage 5-percent bonds	278,492.49
m. Rock Island Improvement Company Peoria Terminal mortgage 5-percent bonds	290,247.86

2. That, before any advance upon the loan is made, The Chicago, Rock Island and Pacific Railway Company deposit with the Reconstruction Finance Corporation binding commitments of the then holders of those obligations, or other evidence satisfactory to that corporation, that 50 percent of the bank loans referred to in said report aggregating $8,750,000 will be extended to a maturity date not earlier than the maturity date of the loan herein conditionally approved;

3. That The Chicago Rock Island and Pacific Railway Company agree with the Reconstruction Finance Corporation to apply the proceeds of the loan herein approved to the purposes designated in said report; and

4. That, within 30 days from and after the making of each advance upon the loan The Chicago, Rock Island and Pacific Railway Company notify, in writing, the Reconstruction Finance Corporation and this commission of the disposition of the proceeds thereof.

By the commission, division 4:

[SEAL] GEORGE B. MCGINTY, *Secretary*.

SUPPLEMENTAL REPORT AND ORDER OF THE INTERSTATE COMMERCE COMMISSION

(184 I. C. C. 735)

Interstate Commerce Commission

Finance Docket No. 9384

The Chicago, Rock Island and Pacific Railway Company reconstruction loan

Submitted June 22, 1932. Decided June 25, 1932

Upon application, modification of the purposes and conditions of a loan to the Chicago, Rock Island & Pacific Railway Company by the Reconstruction Finance Corporation approved. Previous report, 184 I. C. C. 597

M. L. Bell for applicant.

Supplemental report of the commission

Division 4, Commissioners Meyer, Eastman, Brainerd and Mahaffie

By Division 4:

On June 15, 1932, pursuant to an application filed, we approved a loan of $10,000,000 to The Chicago, Rock Island & Pacific Railway Company by the Reconstruction Finance Corporation under the provisions of section 5 of the Reconstruction Finance Corporation Act.

On June 22, 1932, the applicant filed a supplement to the application in which it requested that authority be granted to use the proceeds of the loan, when consummated, for the following purposes:

(1) To meet fixed interest obligations specified in the original application	$4,621,519.50
(2) To meet one-half the principal amount of bank loans maturing August 1, 1932	4,125,000.00
(3) To apply on account of maturing principal installments of equipment trust obligations	1,253,480.50
Total	10,000,000.00

In effect, the applicant requests that it be permitted to divert from that part of the loan originally approved by us for the payment of bank loans to that part for the payment of maturing equipment trust obligations the sum of $250,000, thereby eliminating from the application the item for a bank loan due the First National Bank of Chicago in the sum of $500,000. Eliminating this item, the aggregate amount of bank loans covered by the application is $8,250,000.

After further investigation, we find that paragraph 3 of our report of June 15, 1932, should be modified to read as follows:

> That before any advance upon the loan is made, The Chicago, Rock Island and Pacific Railway Company should deposit with the Reconstruction Finance Corporation binding commitments of the then holders of those obligations, or other evidence satisfactory to that corporation, that 50 percent of the bank loans aggregating $8,250,000 will be extended to maturity dates not earlier than the maturity date of the loan herein conditionally approved.

We further find that the proceeds of the loan should be expended solely for the purposes set forth in this supplemental report, and that other than as modified herein our report and certificate of June 15, 1932, should remain in full force and effect.

An appropriate order will be issued.

(Unreported)

Order

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 25th day of June, A. D. 1932

Finance Docket No. 9384

The Chicago, Rock Island and Pacific Railway Company reconstruction loan

Further investigation of the matters and things involved in the application in this proceeding having been had, and said division having on the date hereof, made and filed a supplemental report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is hereby ordered, That paragraph 2 of the certificate of this commission issued to the Reconstruction Finance Corporation under date of June 15, 1932, be, and it hereby is modified to read as follows:

2. That before any advance upon the loan is made, The Chicago, Rock Island & Pacific Railway Company deposit with the Reconstruction Finance Corporation binding commitments of the then holders of those obligations, or other evidence satisfactory to that corporation, that 50 per cent of bank loans aggregating $8,250,000 will be extended to maturity dates not earlier than the maturity date of the loan herein conditionally approved.

And it is further ordered, That except as herein specifically modified, said certificate dated June 15, 1932, shall be and remain in full force and effect.

By the commission, division 4.

[SEAL] GEORGE B. MCGINTY,
Secretary.

LETTER FROM MR. M. L. BELL, LAW DEPARTMENT, CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, TO MR. OLIVER E. SWEET, DIRECTOR, BUREAU OF FINANCE, INTERSTATE COMMERCE COMMISSION, DATED JUNE 11, 1932

INTERSTATE COMMERCE COMMISSION.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the

attached is true copy of letter dated New York, June 11, 1932, addressed to Mr. Oliver E. Sweet, Director, Bureau of Finance, Interstate Commerce Commission, Washington, D. C., signed M. L. Bell, which is now on file and of record in the office of this Commission.

In witness whereof, I have hereunto set my hand and affixed the seal of said Commission this 14th day of January, A. D. 1935.

[SEAL] GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

(C., R. I. & P. Ry. Co.—Reconstruction Loan 184 I. C. C. 597-735; Finance Docket No. 9384)

THE CHICAGO, ROCK ISLAND AND
PACIFIC RAILWAY COMPANY,
LAW DEPARTMENT, 25 BROAD STREET,
New York, June 11, 1932.

Subject: Finance Docket No. 9384—Application of the C., R. I. & P. Ry. Co. for $10,000,000 loan from Reconstruction Finance Corporation.

Mr. OLIVER E. SWEET,
Director, Bureau of Finance,
Interstate Commerce Commission,
Washington, D. C.

DEAR SIR: Referring to conference yesterday between yourself and Mr. Haley, representing the Commission, and Mr. Nyquist and myself, representing the Railway Company, in the above matter:

1. SCHEDULE G

Herewith a revised Schedule G, as of today, showing the collateral pledged for the bank loans, which stand today at $8,500,000. The collateral pledged, including the Short Line bonds which we

are committed to deliver to the banks as soon as their issue is completed, stands as follows:

C., R. I. & P. First and Refunding Bonds	$12, 390, 000
St. P. & K. C. S. L. First Mortgage Bonds	17, 608, 000
Total	29, 998, 000

You will note that on the original Schedule G the par value of the bonds pledged for the $8,750,000 loans shown on that schedule was as follows:

C., R. I. & P. First and Refunding Bonds	$12, 265, 000
St. P. & K. C. S. L. First Mortgage Bonds	11, 736, 000
Total	24, 001, 000

The difference in these figures is the result of having to pledge additional collateral on account of the decline in the market price of our bonds. The Commission is familiar with the bond market situation.

The change in the amount of loans is the result of having to pay $250,000 of the First National Bank loan due May 19. The remainder was renewed, on condition that it be paid off at maturity, August 1. The facts are reflected in the Treasurer's report to the Commission, dated May 27, 1932.

If the Commission approves the loan to pay off $4,375,000 of the bank loans shown on Schedule G, we will pledge with the Commission all the collateral securing the First National Bank loan of $250,000, which will be paid in full, and one-half the collateral securing the other loans; so that the Commission will receive the following securities from the bank loans:

CRI&P First and Refunding Bonds	$6, 435, 000
StP&KCSL First Mortgage Bonds	9, 154, 000
Total	15, 589, 000
The value of these bonds at 30, which is the figure we discussed yesterday, is	4, 676, 700

The banks, as security for the remaining $4,125,000 of bank loans, will have the following:

CRI&P First and Refunding Bonds	$5, 955, 000
StP&KCSL First Mortgage Bonds	8, 454, 000
Total	14, 409, 000
Value at 30	4, 322, 700

2. OTHER COLLATERAL

The collateral offered in Exhibit 17 of the application is as follows:

C. R. I. & G. Extension First Mortgage Bonds	$6, 927, 000
C. R. I. & G. Carrollton Branch First Mortgage Bonds	331, 000
Kankakee & Seneca Genl. Mtge. Series A Bonds	352, 000
R. I. & D. First Mortgage Gold Bonds	100, 000
R. I. M. T. Depot First Mortgage Bonds	900, 000
R. I. M. T. Terminal First Mortgage Bonds	400, 000
R. I. O. T. First Mortgage Bonds	600, 000
R. I. Improvement Co. Blue Island Shops Mtge	199, 000
R. I. Improvement Co. Cedar Rapids Term. Mtge	369, 732
R. I. Improvement Co. Little Rock Mtge	278, 492
R. I. Improvement Co. Peoria Terminal Mtge	290, 247
Total	10, 747, 471

In addition, we have fundable improvements on various terminal and coal properties, as follows:

R. I. Improvement Co. Blue Island Car Shops	$627, 260
R. I. Improvement Co. Peoria Freight Terminal	80, 065
Rock Island Omaha Terminal Bonds	298, 352
R. I. Improvement Co.—Coal Estate	1, 136, 477
Consolidated Indiana Coal Co.—Coal Estate	779, 860
R. I. Improvement Co.—Chicago Term. Property	751, 587

Application will shortly be made to the Commission for the funding of the $298,000 Rock Island Omaha Terminal Railway Company's additions and betterments, and the corporate machinery is now in process for funding the Rock Island Improvement Company's expenditures and the Consolidated Indiana Coal Company's expenditures. We have also the capital stocks of terminal companies shown on

Schedule L, but these, of course, represent only a part of the capital stocks of the various terminal companies listed.

We have the following listed collateral now free in the treasury:

R. I. A. & L. First Mortgage Bonds	$2, 192, 000
C. R. I. & P. First and Refunding Bonds	1, 140, 000
	3, 332, 000

The discrepancy between Mr. Haley's figures and our figures as to the amount of Refundings and Short Line Bonds available for direct pledge to the Government loan arise from the fact that Mr. Haley's figures apparently included $2,068,000 Short Line Bonds shown on page 4 of my letter to you of May 24 as in process of issue. As pointed out in the third paragraph on that page, we were committed to pledge all the treasury bonds to protect existing bank loans, because at that time the market value of the collateral pledged for the bank loans was less than the face amount of the loans.

3. NECESSITY OF RETAINING BANKABLE COLLATERAL FREE IN TREASURY

We have urged you to allow us to retain free in the treasury the following bonds:

C. R. I. & P. First and Refunding Bonds	$1, 140, 000
R. I. A. & L. First Mortgage Bonds	2, 192, 000

We cannot overstate to you the importance of this matter. For an institution the size of the Rock Island to have in its treasury absolutely no bankable collateral is a situation that is fraught with danger. It is idle to say that we have the remaining collateral represented by Rock Island Improvement Company's unfunded expenditures, or that we can rely

on the pledge of our proportionate share of the stocks of the joint facility and terminal companies listed in Schedule L; for you well know that the banks in these times cannot or will not lend money on such collateral. It is true that our forecast indicates the necessity for additional borrowing in 1932, but, if business picks up even moderately, we will not have to do any borrowing. This forecast is a minimum, and is prepared for the sake of caution. With anything like a revival of traffic, our earnings will exceed the forecast. It is very important to us that we have in our treasury some free securities. We are ready to agree that, if the Commission will leave the above-mentioned bonds free in our treasury, we will use them only for the purpose of new borrowing, and will not pledge any part of the same as additional collateral for any existing loans, without at the same time pledging an aliquot part as further security for the loan sought in this application. If we must make an additional loan from the Reconstruction Finance Corporation, we will, of course, have these bonds available for such additional loan, if necessary.

4. TOTAL COLLATERAL FOR RECONSTRUCTION FINANCE CORPORATION LOAN

If the proposal made by Mr. Nyquist and myself yesterday is approved by the Commission, the Government's loan, when finally made in the sum of $10,000,000, will be secured as follows:

$6,435,000 C. R. I. & P. First and Refunding Bonds at 30	$1,930,500
$9,154,000 St. P. & K. C. S. L. First Mortgage Bonds at 30	2,746,200
Total listed collateral	$4,676,700
$10,747,471 collateral listed in Exhibit 17 (see paragraph 2 of this letter), at 75	$8,060,000

The Commission may also take, if it desires, any or all of the collateral of the subsidiary companies now in process of issue, as set forth in paragraph 2 of this letter.

5. ADEQUACY OF PROPOSED COLLATERAL

We are aware that the Reconstruction Finance Corporation Act requires that loans be fully and adequately secured, but this language must be construed in accordance with the situation which brought about the passage of the Act, which is entitled "An Act to Provide Emergency Financing Facilities", etc. If "fully and adequately secured" meant that the market values under the present emergency conditions should control the Commission, then there would have been no use whatever in enacting the legislation. The Act was passed to "aid in financing agriculture, commerce, and industry", which means, among other things, to aid railroads in getting loans on collateral which has a value behind it, but which, under present conditions, is not bankable.

Now, this collateral which we have offered in Exhibit 17 is, as pointed out in my letter to you of May 24, in every case a first lien either on lines of railway constructed under sanction of the Commission's orders (C. R. I. & G. bonds, for example), which recite that the public convenience and necessity require such construction; or, in the case of the collateral issued prior to the Transportation Act, it is secured by a first lien on terminal properties absolutely essential to the operation of applicant's properties.

As further pointed out in that letter, all of its collateral, with the exception of the Rock Island and

Dardanelle $100,000 bonds, was approved by the Commission as the basis for a loan under Section 210 of the Transportation Act, Certificate 945.

As I have said to you and Mr. Haley verbally and to Mr. Law of your office, this application represents an application by a carrier which is conservatively capitalized; has been carefully, efficiently, and economically operated, which has a great earning capacity as manifested by its results since 1920, which has been conservatively financed, all its financing from 1920 to 1927 having been done directly with the Government; and which has a valuation fixed by the Commission substantially in excess of its capitalization. This application offers the Commission (and I say it with all deference) an opportunity to take a firm and courageous stand in attempting to restore railroad credit. Nothing else would help so much as a constructive attitude on the part of the Commission in matters like this. If the Commission manifests faith in a carrier like the Rock Island, it will help greatly to restore that carrier's credit, but if the Commission, the guardian of that credit, has little faith, then the mountain that the carrier's faith must remove is a very large one indeed.

6. 1934 MATURITIES

You inquired yesterday what plans the company has made for the $126,470,000 maturities in 1934. You are referred to paragraph 9, on page 6, of my letter to you of May 24, and to Finance Docket No. 9410.

We have, naturally, not made any definite plans for selling securities or providing funds to meet these obligations, but we are laying the ground work for a new financial structure, in the hope that between

now and 1934 conditions will enable us to make some practicable plan for our financing them.

Yours truly,

(signed) M. L. BELL.

MLB'S

cc—Messrs. M. C. Kennedy, Carl Nyquist.

APPLICATION NO. II SUBMITTED TO INTERSTATE COMMERCE COMMISSION, FEBRUARY 28, 1933

(Finance Docket No. 9835.)

To the RECONSTRUCTION FINANCE CORPORATION:

The Chicago, Rock Island and Pacific Railway Company, hereinafter called the "applicant", applies for a three-year loan of $8,000,000, and shows:

1. The full corporate name of the applicant is THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY. It is a consolidated corporation, formed June 2, 1880, under the laws of Illinois and Iowa. Its charter was extended for a period of fifty years, from June 2, 1930.

2. The name, title, and address of the person with whom conferences or correspondence should be had with respect to this application are: Marcus L. Bell, Vice President and General Counsel, The Chicago, Rock Island and Pacific Railway Company, 25 Broad Street, New York, N. Y.

3. Applicant cannot secure the necessary funds, in whole or in part, from any other source. On account of the general business situation, none of applicant's banking connections is able or willing to provide the necessary funds.

4. Applicant consents to such examinations as the Corporation may require for the purpose of the act and/or that reports of examinations by constituted authorities may be furnished by such authorities to the Corporation upon request therefor.

5. No agreement has been made, or will be made, by the applicant to pay any person, association, firm or corporation, either directly or indirectly, any commission or fee for the loan applied for, and no such payments have been made, or will be made, by the applicant.

6. The purpose of the loan and the use to which it will be applied, and the date or dates on which the funds must be available to the applicant, are as follows:

Date due	Principal	Interest	Total	Payment desired
March 1st		$1,181,872	$1,181,872	February 28th.
April 1st	$188,000	2,383,200	2,571,200	March 31st.
May 1st		860,405	860,405	April 29th.
June 1st	753,000	437,769	1,190,769	May 31st.
July 1st	655,000	1,574,114	2,229,114	June 30th.
Totals	1,596,000	6,437,360	8,033,360	

7. Applicant has not existing financial relations with the United States as to—

(a) Loans made by the applicant, except loans aggregating $10,000,000 made to the applicant by the Reconstruction Finance Corporation during 1932, all of which loans mature March 1, 1934;

(b) Claims under Section 209 of the Transportation Act;

(c) Claims on account of deficits under Section 204 of the Transportation Act;

(d) Payments on account of excess net railway operating income under paragraph 6 of Section 15a of the Interstate Commerce Act. There are no proceedings before the Interstate Commerce Commission involving excess net railway operating income;

(e) And there are no other debits or credits existing between the applicant and the United States

other than mail pay, transportation of troops or income tax matters.

8. Applicant desires the entire amount of the loan for the full three-year term applied for, from and after the several dates on which the funds are made available as specified in Section 6 hereof.

9. A statement of the latest valuation placed by the Interstate Commerce Commission upon applicant's property, with aggregate net property changes to the latest date to which such changes have been reported to the Bureau of Valuation, is attached hereto as Exhibit 9.

10. No subsidiary or affiliated organization of the applicant, or any organization of which the applicant is a subsidiary, has applied for or received loans from the Reconstruction Finance Corporation.

The applicant has become a party to the Marshalling and Distributing Plan, 1931, of the Railroad Credit Corporation.

12. A comparative statement of the amounts paid to the Railroad Credit Corporation, derived from increases in freight rates under Ex Parte 103, is submitted as Exhibit 12.

13. A comparative monthly estimate of the revenues received and expected to be received from the increases in freight rates permitted by Ex Parte 103, is submitted herewith as Exhibit 13.

14. Applicant applied in 1932 for a loan of $4,621,519.50 from the Railroad Credit Corporation, to enable it to meet its fixed interest obligations maturing from May 1, 1932, to September 1, 1932, inclusive, but applicant has not received such loan. A copy of applicant's said application was attached as an exhibit to applicant's application to the Reconstruction Finance Corporation for the $10,000,000 referred

to in paragraph 7 (a) above. Applicant does not intend to apply for additional loans from the Railroad Credit Corporation.

15. A statement of the principal commodities carried and of the ten most important industries served, is attached hereto as Exhibit 15.

16. The particular facts upon which applicant relies as to its present and prospective ability to repay the loan and discharge its obligations in regard thereto are:

Applicant operates a railway system of approximately 8,000 miles, situated in fourteen states of the Middle West. For the entire period following the termination of Federal Control to the end of the year 1929, applicant earned its fixed charges, the dividends on its preferred stock and approximately $33,000,000 in excess of all dividends paid on its common stock. In 1930 applicant's earnings were sufficient to pay all of its fixed charges, full dividends on its preferred stock, and have left $5.56 per share available for dividends on its common stock. In 1931 applicant failed by approximately $386,000 and in 1932 by approximately $10,000,000 to earn its fixed charges; this was due entirely to the general business depression and applicant has confidence that when normal conditions return it will be able to restore its earnings to the basis existing prior to the depression. Applicant has made reductions in pay, force, and general expenditures as far as is consistent with the proper maintenance and operation of its properties, and is confident that with the material reduction in expenses, even a moderate improvement in business will produce net earnings sufficient to enable applicant to repay the entire loan.

17. A detailed description of the securities to be offered for the loan containing full information and data appropriate thereto is attached hereto as Exhibit 17. Copies of such documents relating to said securities as were not submitted with applicant's former application, are submitted herewith. The applicant's opinion as to the value of the collateral and the basis for that opinion is stated in Exhibit 17.

18. Schedules A to R are submitted herewith.

19. (*a*) A certified copy of applicant's Articles of Consolidation and By-Laws, as amended to date, was submitted with applicant's former application.

(*b*) Preliminary Opinion of Counsel is submitted herewith.

(*c*) Certified copy of resolutions of applicant's Board of Directors adopted January 11, 1933, showing authority of the officers to execute and deliver this application, is submitted herewith.

Applicant, therefore, requests a loan of $8,000,000 for the term and for the purposes specified above, to be made available on the dates indicated. Applicant has very carefully estimated its cash receipts and disbursements, and its requirements for the year are as set forth in Schedule R. If applicant's estimates are borne out by actual results for the remainder of the year 1933, the loan hereby applied for will suffice to enable applicant to go through the year without any additional financing.

Respectfully submitted.

[SEAL] THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,

By (Signed) J. E. GORMAN, *President.*

(Signed) CARL NYQUIST, *Secretary.*

107169—35——5A

MLB's.

cc–Messrs. J. B. EASTMAN,
EZRA BRAINERD, Jr.,
C. D. MAHAFFIE,
OLIVER SWEET.

Exhibit 19 (b)

Preliminary opinion of counsel

NEW YORK, *February 10, 1933.*

To the RECONSTRUCTION FINANCE CORPORATION.

GENTLEMEN:

The undersigned is General Counsel of the Chicago, Rock Island and Pacific Railway Company, applicant herein. He is familiar with the corporate powers of the applicant, and is of the opinion that applicant is authorized to apply for the loan herein stated, and that when proper corporate action has been taken and the obligations executed, and security delivered as contemplated by the application, such obligations will constitute the valid and subsisting obligations of the applicant duly secured by a first and paramount lien on the same. He is also familiar with the collateral specified in Exhibit 17 hereto, and with the corporate procedure relating to its issue, execution, and delivery, and with the lien which the same purports to have. He is of the opinion that each of the said obligations specified in Exhibit 17 is a valid and subsisting obligation of the maker thereof and constitutes a lien on the property of the nature and extent by which it purports to be secured.

Respectfully submitted.

(Signed) MARCUS L. BELL,
General Counsel, The Chicago, Rock Island and Pacific Railway Company.

Exhibit 19 (c)

The Chicago, Rock Island and Pacific Railway Company Resolution of Directors January 11, 1933

The Chairman stated that, by reason of the continued business depression existing throughout the country, the Company's income for 1933 would be insufficient to enable it to provide from earnings sufficient funds to pay all of its taxes and maturing equipment trust obligations, as well as its general vouchers; that, on account of the continued low prices of railway bonds generally, the Company would be unable to provide the necessary funds from the sale of treasury securities, and that it would be impossible to obtain such funds, or any part thereof, through additional bank loans.

After discussion, it was, on motion,

Resolved, That application be made, on behalf of this Company, to the Reconstruction Finance Corporation for a loan or loans in an amount not exceeding in the aggregate $8,000,000 to provide funds to enable the Company to pay its taxes and to meet maturing principal and interest obligations and unpaid vouchers during the year 1933; that J. E. Gorman, President, or Marcus L. Bell, Vice President, or either of them be and he hereby is authorized and directed to make, sign, verify and file such application, on behalf of this Company, and under its corporate seal, and such application as may be necessary to secure the approval of the Interstate Commerce Commission to such loan or loans, and to execute and deliver all agreements, documents, or other instruments, and to pledge as collateral for such loan or loans all the Company's right, title, or interest in all securities now pledged with the Reconstruction Finance Corporation, and all or any part of any securities that are now

or may hereafter be in the Company's treasury, and to do and take all other acts and proceedings, on behalf of the Company, that may be necessary or required to obtain such loan or loans.

STATE OF ILLINOIS,
County of Cook, ss:

I, Carl Nyquist, Secretary of The Chicago, Rock Island and Pacific Railway Company, do hereby certify that the above and foregoing is a full, true, and complete extract from minutes of meeting of the Board of Directors of said Company, duly called and held in the City of New York, January 11, 1933, at which meeting a quorum of said directors was present and acted, as fully appears of record in my said office.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of said The Chicago, Rock Island and Pacific Railway Company, at Chicago, Illinois, this 10th day of February A. D. 1933.

[SEAL] (Signed) CARL NYQUIST,
Secretary The Chicago, Rock Island and Pacific Railway Company.

STATE OF ILLINOIS,
County of Cook, ss:

J. E. Gorman makes oath and says that he is the President of The Chicago, Rock Island and Pacific Railway Company; that he has carefully examined each and all of the statements contained in the foregoing application; that they are true and correct to the best of his knowledge and belief; that the foregoing application is made with the approval and at the direction of the board of directors of said applicant, as appears by resolution adopted at a meeting of said board, a certified copy of which is attached

to the said application, said meeting having been held at the City of New York, N. Y., on the 11th day of January, 1933, and that he is the person who has been authorized by said board to execute the foregoing papers and any others which may be required in connection with the loan.

(Signed) J. E. GORMAN.

Subscribed and sworn to before me, a Notary Public in and for the State and County abovenamed, this tenth day of February 1933.

[SEAL] (Signed) W. J. GEDL.

My commission expires November 15, 1933.

REPORT AND CERTIFICATE OF INTERSTATE COMMERCE COMMISSION APPROVING LOAN OF $3,718,700 FROM RECONSTRUCTION FINANCE CORPORATION TO THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY

Interstate Commerce Commission

(189 I. C. C. 522, Finance Docket No. 9835)

The Chicago, Rock Island & Pacific Railway Company Reconstruction Loan

Submitted February 28, 1933. Decided February 28, 1933

Upon Application for a Loan of $8,000,000 to the Chicago, Rock Island & Pacific Railway Company by the Reconstruction Finance Corporation a Loan of $3,718,700 Approved. Terms Prescribed

M. L. Bell, Thos. P. Littlepage, and *A. Rea Williams* for applicants.

Report of the Commission

Division 4, Commissioners Meyer, Eastman, Brainerd, and Mahaffie

By Division 4:

The Chicago, Rock Island & Pacific Railway Company, on February 7, 1933, filed an application requesting an additional loan from the Reconstruction Finance Corporation, hereinafter called the Finance Corporation, under the provisions of section 5 of the Reconstruction Finance Corporation Act, approved January 22, 1932, as amended and on February 28, 1933, filed amendment thereto. By the terms of that act, our approval is a condition precedent to the granting of loans to railroad companies. We have made the required investigation.

By our report upon a previous application in *Chicago, R. I. & P. Ry. Co. Reconstruction Loan*, 187 I. C. C. 597, we approved a loan of $10,000,000 on June 15, 1932, to be used for specified purposes and upon prescribed conditions. The applicant's property was therein described, and its financial structure and prior earnings discussed. This loan, made on various dates after the pledge of collateral security prescribed by us, has been fully consummated.

The application

By the amended application the applicant seeks a loan of $3,753,072 for a term of three years and asserts that due to the general business situation, none of its banking connections will provide the necessary funds, and that it is unable to procure them from any other sources. The applicant is a party to the "Marshalling and Distributing Plan, 1931" of the Railroad Credit Corporation, but has sought no

financial aid from that corporation other than that indicated in our previous report. No loan has been made to the applicant by that corporation.

This loan is sought to enable the applicant to meet, when due, the principal of and interest on equipment trusts and interest on mortgage bonds of the system. The indebtedness to which the funds will be applied and the dates when they are needed are shown to be as follows:

Principal	Interest	Total	Date due
.....	$1,181,872	$1,181,872	March 1, 1933.
$188,000	2,383,200	2,571,200	April 1, 1933.
$188,000	$3,565,072	$3,753,072	

The applicant states that no agreement has been or will be made by it to pay any person, association, firm or corporation, either directly or indirectly, any commission or fee for the loan applied for, and that no such payments have been or will be made. Other than the first loan from the Finance Corporation, the applicant has no existing financial relations with the United States. No liability by the applicant under paragraph (6) of section 15a of the interstate commerce act has been determined.

Necessities of the applicant

In our previous report we discussed the physical property and its valuation, the financial structure, and the prior earning of the applicant, so far as the information was then available. We also showed and discussed estimates of cash requirements and income of the applicant to the end of the year 1932.

Of the total loan now sought, $206,800 is for the payment of principal and interest of equipment trust

notes, $34,372 is for interest on existing corporation loans, and the remainder, $3,511,900, is to apply to the payment of interest on various bond issues of the applicant and its constituent lines. The loan with which to pay interest on the previous loan by the corporation to the applicant will not be approved.

Of the interest to be paid, $2,611,900 is for interest on bonds which mature in 1934 and possess a direct first lien upon 2,904.13 miles of road; and the remainder, $900,000, is to pay semiannual interest on an issue of notes secured by $45,000,000 of the applicant's first and refunding bonds.

The applicant now submits estimates of its income and cash receipts and disbursements for 1933. Based on similar estimates submitted at the time of the first application, it was expected that by the end of December, 1932, there would be a shortage of cash of $5,469,000. Notwithstanding the failure, by a substantial margin, to receive the revenues then estimated, the applicant entered 1933 with approximately $2,673,000 in cash. It is stated, however, that, at the close of business on February 28, 1933, the applicant will have on hand but $1,125,000 in cash against which there are payments of interest due on March 1, of $1,181,872, with payroll payments of $1,260,000 in from five to eight days thereafter. A deficit in cash or a default upon the applicant's obligations of substantial proportions will therefore exist, unless additional funds be secured. A forecast of cash receipts and disbursements submitted by the applicant covering the remainder of the year 1933 shows that without a loan the applicant's deficit in cash after March will continue and increase. The estimated need for cash in excess of expected receipts shows a cash deficit of $8,203,524 by the end of December.

If the loan be approved and advances made as requested, it appears that the applicant will enter May supplied with a cash working balance of $1,487,811. Thereafter, it will have deficits of substantial proportions. Included in the forecast of necessary disbursements for 1933 is the payment of $3,000,000 of unpaid vouchers and of $4,067,000 of equipment trust certificates.

In estimating its revenues for 1933 an increase of 5 percent in freight revenues over 1932 is anticipated. The applicant shows that before making the estimate, it conferred with large shippers in the territory served. From the information thus obtained it has concluded there will be a moderate improvement in the shipment of automobiles, perishable fruits and vegetables, grain, lumber, road-building materials, and livestock. The revenues from passenger and mail service, it is estimated, will be approximately 10 percent less in 1933 than in 1932. Express revenues for the two periods are expected to be about equal. In operating expenses a decrease on the whole is predicted. Expenses for maintenance of way and structures and maintenance of equipment have been budgeted to meet the necessities of safe and economic operation. Transportation expenses are estimated on the basis of service expected to be rendered, and all other expense accounts used in computing net railway operating income are based upon recent levels.

It is shown that on December 31, 1932, there was a surplus of 148 serviceable locomotives and 23,379 serviceable cars stored, all in good condition. On January 1, 1933, there were approximately twice as many bad order freight-train cars as on January 1, 1929, but the total was less than 10 percent of the total ownership. Passenger equipment was not in as good condition, 73 percent being in arrears for shop-

ping. Some maintenance on locomotives was deferred in 1932, but an increase in the expenditures is forecast for 1933, which will overcome such arrears.

In recent years the applicant substantially reduced its expenditure for maintenance. Nevertheless, it is asserted that the reduction in train mileage and in consequent wear and tear, the previous excellent condition of the property, and economies affected during the past three years, have enabled it to keep the property in satisfactory condition at substantially less expense.

Security

As collateral security for the loan, the applicant offers the immediate pledge of $1,140,000 of its first and refunding mortgage 4-percent bonds of 1934, $3,792,000 of Rock Island, Arkansas & Louisiana Railway Company first mortgage 4½-percent bonds of 1934, $306,000 of Rock Island-Omaha Terminal Railway Company first mortgage 5-percent bonds of 1934, $3,310,000 of Rock Island Improvement Company first and collateral mortgage 5-percent bonds of 1962, $747,492.51 of 6-percent receiver's certificates, issued by a former receiver of the Trinity & Brazos Valley Railway Company, the applicant's equity in $4,380,000 of Trinity & Brazos Valley first mortgage 5-percent bonds, and an assignment of its distributive share in the fund administered by the Railroad Credit Corporation. The pledge is also offered, as and when issued, of $259,000 of St. Paul & Kansas City Short Line Railroad Company first mortgage 4½-percent bonds of 1941 and $391,000 of the aforesaid bonds of the Louisiana company. Application for the issue thereof has been filed.

For the period from January to October 1932, inclusive, the applicant has paid to the Railroad

Credit Corporation the sum of $1,028,212.86 representing accruals from increases in rates authorized by us. For the period from November 1932 to March 1933 it is estimated that an additional amount of not less than $459,811.16 will be similarly paid.

In our previous report we discussed the mortgages under which the bonds of the applicant, of the Short Line and of the Omaha Terminal were issued, the character of the property covered thereby, and its value for rate-making purposes to the extent that the information was available. The bonds of the Louisiana proposed to be pledged are a part of a total issue of $15,183,000 which are or will be outstanding, and are a direct lien upon property which we valued for rate-making purposes at $10,750,000 as of June 30, 1915, to which net additions, aggregating $2,803,158 are reported to have been made up to December 31, 1931. The mortgage is shown to possess a first lien upon approximately 354 miles of road.

The new Improvement Company first and collateral mortgage bonds are issued under a new mortgage consolidating the existing mortgages and taking in all the properties of that company. The applicant does not indicate the precise nature or amount of property to be covered thereby.

The $4,380,000 of bonds of the Trinity (now the Burlington-Rock Island Railway Company) are owned by the applicant subject to their existing pledge under the refunding and extension (now the first) mortgage of the Colorado & Southern Railway Company. These bonds were acquired under an agreement between the applicant and the latter company, but delivery is delayed pending the maturity of said mortgage of the Colorado & Southern on May 1, 1935. Their delivery to the applicant on that date is assured under an escrow agreement of

December 23, 1918, secured by the pledge by the Colorado company of $4,190,000 of its refunding and extension mortgage bonds as surety for the performance of its obligation to deliver them. The foregoing represents one-half of the total issue of bonds of the Trinity, which however are subject to $1,492,470 of receiver's certificates outstanding against its property. The Trinity is the owner of 235.8 miles of mail line. In *Trinity & B. V. Ry. Co.*, 149 I. C. C. 301, we found the value for rate-making purposes as of June 30, 1916, of its property wholly owned and used, exclusive of working capital, to be $8,900,000.

The receiver's certificates of the Trinity which are offered for pledge are a part of the aforementioned $1,492,470 of such certificates which are outstanding.

Briefly reviewing some of the facts referred to in our previous report which are pertinent in the consideration of this case, it appears that the applicant operates a system of railways of approximately 8,000 miles, situated in 14 states of the middle west. For the entire period from the termination of Federal control to the end of the year 1929, the applicant earned its fixed charges, dividends on its preferred stock, and approximately $33,000,000 in excess of the dividends paid on its common stock. In 1930 the applicant's earnings were sufficient to pay all its fixed charges and full dividends on its preferred stock, leaving a substantial amount available for dividends on its common stock. In 1931 it failed by approximately $386,000 to earn its fixed charges, and in 1932 by approximately $10,000,000. The applicant asserts that this was due entirely to the general business depression and relies on its record to demonstrate its prospective ability to repay the loan. The applicant

asserts that it has made reductions in pay, force, and general expenditures, as far as is consistent with the proper maintenance and operation of its properties, and expresses confidence that a moderate improvement in business will produce net earnings sufficient to enable it to repay the entire loan. In the decade ending with 1930, the applicant had gross revenues averaging $134,635,758 per annum. In the same decade the applicant's operating expenses averaged $102,900,894, and the amount earned available for interest charges averaged about $21,000,000. The applicant's condensed income account, for 1932 and as it is now estimated for 1933, is shown to be as follows:

	1932 (actual)	1933 (estimated)
Railway operating revenues	$70,780,027	$72,680,128
Railway operating expenses	56,341,423	54,860,785
Railway operating income	8,525,472	11,801,343
Nonoperating income	1,474,427	1,508,303
Gross income	9,999,899	13,309,646
Deductions from gross income (exclusive of interest)	5,734,469	5,863,240
Amount available for interest	4,265,430	7,446,406
Interest requirement	14,222,231	14,195,102

The applicant has included nothing after March 31, 1933, in its income account or cash forecast on account of emergency freight rates under our decision in Ex Parte 103. Accruals prior to March 1 in the estimates are offset by payments to the Railroad Credit Corporation.

At the level of expenses existing when we previously considered the requirements of the applicant, it appeared that $100,000,000 of gross revenues would enable the applicant to meet all its fixed charges. Exclusive of depreciation and retirements of equipment, the applicant now estimates that additional gross revenues of approximately $7,500,000

over the estimate for 1933 shown above would be required to meet its fixed charges. Expense for depreciation and retirement of equipment accrued in the estimates for 1933 is $4,632,000.

The applicant's 1934 maturities

The record shows that in March and April 1934 the applicant will be required to meet an aggregate of $140,595,000 of maturing debt. This includes $14,125,000 of bank and corporation loans, $11,000,000 of Rock Island, Arkansas & Louisiana Railroad Company first mortgage bonds, due March 1, $11,000,000 of Burlington, Cedar Rapids & Northern Railway Company bonds, and $104,470,000 of the applicant's first and refunding 4 percent bonds. In addition, there are equipment trust notes amounting to approximately $4,255,000 to be paid on or before April 1, 1934. The applicant has applied to us for authority to unify its system so as to simplify the issue of a new mortgage with which to accomplish its refinancing.

Conclusion

We conclude:

1. That we should approve a loan of not to exceed $3,718,700 by the corporation, to be advanced to the applicant for terms to expire not later than March 1, 1934, and to be devoted to the purposes set forth in this report;

2. That before any advance upon the loan is made the applicant should pledge with the corporation, as collateral security for this and for previous loans to the applicant, the following securities:

(a) The Chicago, Rock Island & Pacific Railway Company first- and refunding-mortgage 4-percent bonds of 1934	$1, 140, 000. 00
(b) Rock Island, Arkansas & Louisiana Railroad Company first-mortgage 4½-percent bonds of 1934	3, 792, 000. 00

(c) Rock Island Omaha Terminal first-mortgage 5-percent bonds	306,000.00
(d) Rock Island Improvement Company first- and collateral-mortgage 5-percent bonds of 1962	3,310,000.00
(e) All of the right, title, interest, and claim of The Chicago, Rock Island & Pacific Railway Company in and to $4,380,000 of first-mortgage 6-percent bonds of 1935 of the Trinity & Brazos Valley Railway Company and $4,190,000 of refunding- and extension-mortgage 4½-percent bonds of the Colorado & Southern Railway Company, existing by virtue of an agreement between said Colorado & Southern Railway Company and The Chicago, Rock Island & Pacific Railway Company dated December 23, 1918.	
(f) Trinity & Brazos Valley Railway Company receiver's certificates (Matured)	$747,492.51

and before any advance upon the second part of the loan is made, by the pledge of all or such part as we may authorize of

(g) St. Paul & Kansas City Short Line Railroad Company first mortgage 4½ percent bonds of 1934, amount for which application is pending	$259,000.00
(h) Rock Island, Arkansas & Louisiana Railroad Company first mortgage 4½ percent bonds of 1934, amount for which application is pending	391,000.00

3. That the applicant should deposit with the corporation, as additional security for such loans, an assignment, in form satisfactory to that corporation, of its distributive share in the fund administered by the Railroad Credit Corporation under its "Marshalling and Distributing Plan, 1931;"

4. That the corporation will be adequately secured under these conditions; and

5. That the applicant should be required to notify the corporation and this commission, within thirty days from the date of each advance upon the loan, of the expenditure of the proceeds thereof for the purpose for which it is authorized.

An appropriate certificate of approval will be issued.

[Unreported]

Certificate

At a session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 28th day of February, A. D. 1933

Finance Docket No. 9835

The Chicago, Rock Island & Pacific Railway Company Reconstruction Loan

Investigation of the matters and things involved in the application in this proceeding having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is hereby certified, That this commission approves a loan of not exceeding $3,718,700 to The Chicago, Rock Island and Pacific Railway Company by the Reconstruction Finance Corporation, to be advanced to said company for a term or terms to expire not later than March 1, 1934, and to be used for the purposes set forth in said report; subject, however, to the following conditions:

1. That before any advance upon this loan be made, The Chicago, Rock Island and Pacific Railway Company pledged with the Reconstruction Finance Corporation, as collateral security for said loan and for previous loans made to said company, the following described securities:

(a) The Chicago, Rock Island and Pacific Railway Company first- and refunding-mortgage 4-percent bonds of 1934	$1,140,000
(b) Rock Island, Arkansas & Louisiana Railroad Company first-mortgage 4½-percent bonds of 1934	3,792,000
(c) Rock Island Omaha Terminal Company first-mortgage 5-percent bonds	306,000

(*d*) Rock Island Improvement Company first- and collateral-mortgage 5-percent bonds of 1962..... $3,310,000

(*e*) All of the right, title, interest, and claim of The Chicago, Rock Island and Pacific Railway Company in and to $4,380,000 of first mortgage 6-percent bonds of 1935 of the Trinity & Brazos Valley Railway Company, and $4,190,000 of refunding- and extension-mortgage 4½-percent bonds of the Colorado & Southern Railway Company, existing by virtue of an agreement between said Colorado & Southern Railway Company and The Chicago, Rock Island and Pacific Railway Company, dated December 23, 1918.

(*f*) Trinity & Brazos Valley Railway Company Receivers' certificates (matured)..... 747,492.51

and before any advance upon the second part of the loan is made, by the pledge of all or such part as we may authorize of—

(*g*) St. Paul & Kansas City Short Line Railroad Company first-mortgage 4½-percent bonds of 1934, amount for which application is pending..... $259,000

(*h*) Rock Island, Arkansas & Louisiana Railroad Company first-mortgage 4½-percent bonds of 1934, amount for which application is pending..... 391,000

2. That The Chicago, Rock Island and Pacific Railway Company deposit with the Reconstruction Finance Corporation, as additional security for such loans, an assignment, in form satisfactory to that corporation, of its distributive share in the fund administered by the Railroad Credit Corporation under its "Marshalling and Distributing Plan, 1931;"

3. That The Chicago, Rock Island and Pacific Railway Company, within 30 days after the making of each advance upon the loan, notify, in writing, the Reconstruction Finance Corporation and this Commission of the expenditure of the proceeds thereof for the purpose for which authorized.

By the commission, division 4:

GEORGE B. MCGINTY,
Secretary.

[Seal]

107160—35——6A

SUPPLEMENTAL APPLICATION NO. II SUBMITTED TO INTERSTATE COMMERCE COMMISSION, ----------

(189 I. C. C. 522; Finance Docket No. 9835)

Before the Reconstruction Finance Corporation

Application of The Chicago, Rock Island and Pacific Railway Company for a loan of $8,000,000

To the RECONSTRUCTION FINANCE CORPORATION:

The Chicago, Rock Island and Pacific Railway Company, applicant herein, applies for an additional loan of $2,500,000 to enable it to meet the following maturities of principal and interest:

June 1:		
Equipment Trust, Series L, principal	$285,000	
Equipment Trust, Series L, interest	78,375	
Equipment Trust, Series Q, principal	468,000	
Equipment Trust, Series Q, interest	263,250	
TOTAL, June 1		$1,094,625
July 1:		
General Mortgage 4% Bonds, due January 1, 1988, interest	1,231,620	
Choctaw & Memphis 5% Gold Bonds, 1949, interest	88,100	
Little Rock & Hot Springs Western 6% notes, interest	9,072	
Equipment Trust, Series O, principal	655,000	
Equipment Trust, Series O, interest	147,375	
July 15:		
Equipment Trust, Series I (Director General's No. 25), interest	32,400	
TOTAL, July		2,163,567
Grand Total, June and July		3,258,192

Applicant offers as additional collateral the following:

1. Collateral now pledged for $4,125,000 bank loans, due March 1, 1934:	
Chicago, Rock Island and Pacific First and Refunding 4's	$5,955,000
St. Paul & Kansas City Short Line 4½'s	8,454,000
Total	14,409,000
The equity in this collateral, based on market price as of May 25, 1933, over and above the amount of the loans was	1,470,012
2. Preferred stock, Arkansas & Memphis Railway Bridge and Terminal Company	550,000
3. Common stock, Belt Railway Company of Chicago	240,000

Applicant has submitted a statement of its current earnings and carloadings.

Applicant's cash on hand, as of May 26, 1933, was $2,100,740.92. Its unpaid vouchers were $3,417,000, a reduction during the last two months of approximately $700,000.

Applicant is of the opinion that, if this advance be made to it, the increased traffic and greatly improved conditions throughout the country will enable it to go through the remainder of the year 1933, down to January 1st, 1934, without further outside assistance.

With the assurance that the additional funds hereby applied for can be had by the end of June, applicant can, by deferring certain payments, meet the June 1st requirements.

Applicant respectfully requests a loan of the additional amount above specified for the reasons set forth in its original application herein.

Respectfully submitted.

THE CHICAGO, ROCK ISLAND AND
PACIFIC RAILWAY COMPANY,
By M. A. BELL, *Vice President.*

Dated at WASHINGTON, D. C.,
May 31, 1933.

LETTER FROM MR. M. L. BELL, LAW DEPARTMENT, CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY TO MR. B. H. MEYER, CHAIRMAN OF DIVISION FOUR, INTERSTATE COMMERCE COMMISSION, DATED JUNE 2, 1933. (C. R. I. & P. RAILWAY CO.—RECONSTRUCTION LOAN, 189 I. C. C. 522—FINANCE DOCKET 9835.)

INTERSTATE COMMERCE COMMISSION.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of letter dated New York, June 2, 1933, addressed to Hon. B. H. Meyer, chairman of Division Four, Interstate Commerce Commission, Washington, D. C., signed M. L. Bell, now on file and of record in Finance Docket No. 9835, Chicago, Rock Island and Pacific Railway Company Reconstruction Loan.

In witness whereof, I have hereunto set my hand and affixed the seal of said Commission this 17th day of January, A. D. 1935.

[SEAL] GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

THE CHICAGO, ROCK ISLAND
AND PACIFIC RAILWAY COMPANY,
LAW DEPARTMENT,
25 Broad Street, New York, June 2, 1933.

M. L. BELL,
Vice President and
General Counsel.

Subject: Finance Docket No. 9835.

Hon. B. H. MEYER,
Chairman of Division Four,
Interstate Commerce Commission,
Washington, D. C.

MY DEAR MR. MEYER: Referring to your statement, at the conference of Mr. Brown and myself with Division Four, that the value of our proposed collateral was approximately $7,000,000.

Herewith is submitted a statement of the value of our pledged collateral at the closing market prices of yesterday. From this you will see that at these prices the value of the listed collateral pledged with the Reconstruction Finance Corporation is as follows:

$7,575,000 C. R. I. & P. Refunding 4s, at 28	$2,121,000
$9,374,000 St. P. & K. C. S. L. 4½s, at 47	4,405,780
$3,862,000 R. I. A. & L. 4½s, at 27½	1,062,050
	7,588,830

The equity in the collateral pledged for the bank loans, at yesterday's closing prices as shown by the enclosed statement, is $1,515,780, bringing the total up to $9,104,610.

To this must be added the distributive share of the Railroad Credit Corporation's funds, to which our contributions have been $1,431,000. While this is not a listed collateral, it certainly is an asset.

In addition to the foregoing we have pledged with the Reconstruction Finance Corporation unlisted

securities, representing investments at par in subsidiary companies, aggregating $19,490,965, and have offered additional securities of a similar nature aggregating $790,000. While there is no market for these securities, they certainly have a value. Even a price of 40 for these unlisted securities now pledged would place their value at approximately $7,800,000; and the Commission should bear in mind, what we have already stated in this proceeding, that it was our plan (subject to I. C. C. approval under Section 20a), on the execution of our new mortgage, to refund these unlisted securities into our new bonds so their availability as collateral would be greatly enhanced. If the Commission should approve an additional loan, it could insert in its order a condition requiring this refunding.

To summarize, our collateral presently offered to the Commission is as follows:

1. Collateral now pledged for loans aggregating $13,718,700:	
Listed collateral, as of June 1	$7, 588, 830
Unlisted collateral, at 40	7, 800, 000
Distributive share of Railroad Credit Corporation	1, 200, 000
2. Equity in bank loans	1, 515, 780
Total	18, 104, 610

This certainly appears to be adequate collateral, under the circumstances, for an additional advance of $2,000,000. In view of this showing, towards which you said the Division expressed itself to be in a receptive mood, I hope you will take a more favorable view of our application than was indicated yesterday. We are anxiously awaiting the result.

Yours truly,

(Sgd.) M. L. Bell.

PERTINENT SECTIONS OF THE BANKRUPTCY ACT, AS AMENDED.

Section 2 (7) (15) (20) of the Bankruptcy Act (July 1, 1898, c. 541, Sec. 2 (7) (15) (20), 30 Stat. 545; U. S. C. A., Title 11, Sec. 11 (7) (15) (20)):

> The courts of bankruptcy as defined in the previous chapter, * * * are hereby invested, within their respective territorial limits as established on July 1, 1898, or as they may be thereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, * * * to * * * (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title; * * * (20) exercise ancillary jurisdiction over persons or property within their respective territorial limits in aid of a receiver or trustee appointed in any bankruptcy proceedings pending in any other court of bankruptcy. * * *

Section 57 (h) of the Bankruptcy Act (July 1, 1898, c. 541, Sec. 57 (h), 30 Stat. 560; U. S. C. A., Title 11, Sec. 93 (h)):

> The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance.

Section 60 (b) of the Bankruptcy Act (July 1, 1898, c. 541, Sec. 60, 30 Stat. 562; Feb. 5, 1903, c. 487,

Sec. 13, 32 Stat. 799; June 25, 1910, c. 412, Sec. 11, 36 Stat. 842) (U. S. C. A., Title II, sec. 96, subsection (b)) provides:

> (b) If a bankrupt shall have procured or suffered a judgment to be entered against him in favor of any person or have made a transfer of any of his property, and if, at the time of the transfer, or of the entry of the judgment, or of the recording or registering of the transfer if by law recording or registering thereof is required, and being within four months before the filing of the petition in bankruptcy or after the filing thereof and before the adjudication, the bankrupt be insolvent and the judgment or transfer then operate as a preference, and the person receiving it or to be benefited thereby, or his agent acting therein, shall then have reasonable cause to believe that the enforcement of such judgment or transfer would effect a preference, it shall be voidable by the trustee and he may recover the property or its value from such person. And for the purpose of such recovery any court of bankruptcy, as hereinbefore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

Section 67 (d) and (e) of the Bankruptcy Act (July 1, 1898, c. 541, Sec. 67 (d) and (e), 30 Stat. 564, as amended by Act of June 25, 1910, c. 412, Sec. 12, 36 Stat. 842; U. S. C. A., Title 11, Sec. 107 (d) and (e)):

> (d) Liens given or accepted in good faith and not in contemplation of or in fraud upon the provisions of this title, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall, to the extent of such present consideration only, not be affected by anything herein.

(e) That all conveyances, transfers, assignments, or incumbrances of his property or any part thereof, made or given by a person adjudged a bankrupt under the provisions of this Act and within four months prior to the filing of the petition, with the intent and purpose on his part to hinder, delay, or defraud his creditors, or any of them, shall be null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned, or encumbered as aforesaid shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt and shall pass to his said trustee, whose duty it shall be to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors. And all conveyances, transfers, or incumbrances of his property made by a debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the State, Territory, or District in which such property is situate, shall be deemed null and void under this Act against the creditors of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee and be by him reclaimed and recovered for the benefit of the creditors of the bankrupt. For the purpose of such recovery any court of bankruptcy, as hereinbefore defined, and any state court which would have had jurisdiction, if bankruptcy had not intervened, shall have concurrent jurisdiction.

Section 70 (e) of the Bankruptcy Act (July 1, 1898, c. 541, Sec. 70, 30 Stat. 565; Feb. 5, 1903, c. 487,

Sec. 16, 32 Stat. 800) (U. S. C. A., Title 11, Section 110, subsection (e)) provides:

> (e) The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value. For the purpose of such recovery any court of bankruptcy as hereinbefore defined and any State court which would have had jurisdiction if bankruptcy had not intervened shall have concurrent jurisdiction.

Section 73 (47 Stat. 1467, U. S. C. A., Title 11, Sections 201).

> Additional Jurisdiction.—In addition to the jurisdiction exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, courts of bankruptcy shall exercise original jurisdiction in proceedings for the relief of debtors, as provided in sections 74, 75, and 77 of this Act.

Section 74, sub-clauses (h), (m), (n), of the Bankruptcy Act (July 1, 1898, c. 541, Sec. 74. (h) (m) (n), as added by Act of March 3, 1933, c. 204, Sec. 1, 47 Stat. 1469–1470; U. S. C. A., Title 11, Sec. 202 (h) (m) (n)):

> (h) The terms of an extension proposal may extend the time of payment of either or both unsecured debts and secured debts the security for which is in the actual or constructive possession of the debtor or of the custodian or receiver, and may provide for priority of payments to be made during the period of extension as between secured and unsecured

creditors. It may also include specific undertakings by the debtor during the period of the extension, including provisions for payments on account, and may provide for supervisory or other control over the debtor's business or affairs during such period by a creditor's committee or otherwise, and for the termination of such period under certain specified conditions: *Provided*, That the provisions of this section shall not affect the allowances and exemptions to debtors as are provided for bankrupts under title 11, chapter 3, section 24, of the United States Code, and such allowances and exemptions shall be set aside for the use of the debtor in the manner provided for bankrupts.

* * * * *

(m) The filing of a debtor's petition or answer seeking relief under this section shall subject the debtor and his property, wherever located, to the exclusive jurisdiction of the court in which the order approving the petition or answer as provided in subdivision (a) is filed, and this shall include property of the debtor in the possession of a trustee under a trust deed or a mortgage, or a receiver, custodian, or other officer of any court in a pending cause, irrespective of the date of appointment of such receiver or other officer, or the date of the institution of such proceedings: *Provided*, That it shall not affect any proceeding in any court in which a final decree has been entered. In proceedings under this section, except as otherwise provided therein, the jurisdiction and powers of the court, the title, powers, and duties of its officers and, subject to the approval of the court, their fees, the duties of the debtor, and the rights and liabilities of creditors, and of all persons with respect to the property of the debtor and the jurisdiction of appellate courts shall be the same as if a voluntary petition for adjudication had been

filed and a decree of adjudication had been entered on the day when the debtor's petition or answer was filed and any decree of adjudication thereafter entered shall have the same effect as if it had been entered on that day.

(n) In addition to the provisions of section 11 of this Act for the staying of pending suits, the court, on such notice and on such terms, if any, as it deems fair and equitable, may enjoin secured creditors who may be affected by the extension proposal from proceeding in any court for the enforcement of their claims until the extension has been confirmed or denied by the court.

SECTION 77 OF THE BANKRUPTCY ACT

[July 1, 1898, ch. 541, Sec. 77 as added March 3, 1933, ch. 204, Sec. 1, 47 stat. 1474; 11 U. S. C. A. 205]

SEC. 77. (a) Any railroad corporation may file a petition stating that the railroad corporation is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization. The petition shall be filed with the court in whose territorial jurisdiction the railroad corporation, during the preceding six months or the greater portion thereof, has had its principal executive or operating office, and a copy of the petition shall at the same time be filed with the Interstate Commerce Commission hereinafter called the commission: *Provided*, That when any railroad, although engaged in interstate commerce, lies wholly within one State, such proceedings shall be brought in the Federal district court within the State in which the railroad is located. The petition shall be accompanied by payment to the clerk of a filing fee of $100, which shall be in addition to the fees required to be collected by the clerk under other sections of this Act. Upon the filing of such a petition, the judge shall enter an order either approving it as properly filed under this section, if

satisfied that such petition complies with this section and has been filed in good faith, or dismissing it if not so satisfied. If the petition is so approved, the court in which such order approving the petition is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located. The railroad corporation shall be referred to in the proceedings as a "debtor". Any corporation, the majority of the capital stock of which having power to vote for the election of directors is owned, either directly or indirectly through an intervening medium, by any railroad corporation filing a petition as a debtor under this section, or substantially all of whose properties are operated by such a debtor under lease or operating agreement may file, with the court in which such other debtor had filed such a petition, and in the proceeding upon such petition under this section, a petition stating that it is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization in connection with, or as a part of, the plan of reorganization of such other debtor; and thereupon such court shall have the same jurisdiction with respect to it, its property and its creditors and stockholders as the court has with respect to such other debtor. Creditors of any railroad corporation having claims or interests aggregating not less than per 5 centum of all the indebtedness of such railroad corporation as shown in the latest annual report which it has filed with the commission at the time when the petition is filed, may, if the railroad corporation has not filed a petition under this section, but subject to first having obtained the approval of the Interstate Commerce Commission, after hearing, upon notice to such railroad corporation, file with the court

in which such railroad corporation might file a petition under the provisions of this section, a petition stating that such railroad corporation is insolvent or unable to meet its debts as they mature and that such creditors propose that it shall effect a reorganization; upon such filing of such a petition copies thereof shall be filed with the commission and served by the petitioning creditors forthwith upon the railroad corporation; the railroad corporation shall, within ten days after such service, answer such petition; if such answer shall admit the jurisdiction of the court, that the claims of the petitioning creditors constitute the amounts necessary to entitle them to file such petition under this section, and that the railroad corporation is either insolvent or unable to meet its debts as they mature, the court shall, upon the filing of the recommendations of the commission in writing, enter an order approving the petition as properly filed under this section if satisfied that it complies with this section and has been filed in good faith, or disapprove it if not so satisfied; and if so approved the proceedings thereon shall continue with like effect as if the railroad corporation had itself filed a petition under this section; if such answer shall deny either the jurisdiction of the court or that the claims of the petitioning creditors constitute such necessary amounts or that the railroad corporation is insolvent or unable to meet its debts as they mature, the court shall summarily try the issues, and if after the filing of the recommendations of the commission in writing it shall find that the petition complies with this section, and has been filed in good faith, the court shall enter an order approving the petition as properly filed under this section, and the proceedings thereon shall continue with like effect as if the railroad cor-

poration had itself filed a petition under this section; otherwise the court shall dismiss the petition.

(b) A plan of reorganization within the meaning of this section (1) shall include a proposal to modify or alter the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; (2) may include, in addition, provisions modifying or altering the rights of stockholders generally, or of any class of them; (3) shall provide adequate means for the execution of the plan, which may, so far as may be consistent with the provisions of sections 1 and 5 of the Interstate Commerce Act as amended, include the transfer or conveyance of all or any part of the property of the debtor to another corporation or to other corporations or the consolidation of the properties of the debtor with those of another railroad corporation, or the merger of the debtor with any other railroad corporation and the issuance of securities of either the debtor or any such corporation or corporations, for cash, or in exchange for existing securities, or in satisfaction of claims or rights, or for other appropriate purposes; and (4) may deal with all or any part of the property of the debtor. The term "securities" shall include evidences of indebtedness, either secured or unsecured, bonds, stocks, certificates of beneficial interest therein, and certificates of beneficial interest in property. The term "stockholders" shall include the holders of voting trust certificates. The term "creditors" shall, except as otherwise specifically provided in this section, include, for all purposes of this section and of the reorganization plan, its acceptance and confirmation, all holders of claims, interests, or securities of whatever character against the debtor or its property,

including claim for future rent, whether or not such claims, interests, or securities would otherwise constitute provable claims under this Act.

(c) Upon approving the petition as properly filed the judge (1) may temporarily appoint from a panel of standing trustees qualified for such service to be selected and designated in advance by the commission a trustee or trustees of the debtor's estate, who shall have all the title and, subject to the control of the judge and consistently with the provisions of this section, shall exercise all the powers of a trustee appointed pursuant to section 44 or any other section of this Act, and, subject to the judge's control and the jurisdiction of the commission as provided by the Interstate Commerce Act as amended, shall have the power to operate the business of the railroad corporation; (2) shall fix the amount of the bond of such trustee or trustees and require the debtor, the trustee, or trustees to give such notice as the order may direct to creditors and stockholders and to cause publication thereof to be made at least once a week for two successive weeks of a hearing to be held within thirty days after such appointment, at which hearing or any adjournment thereof the judge may make permanent such appointment, or may terminate it and may, in the manner herein provided for the appointment of trustees, appoint a substitute trustee or substitute trustees, and in the same manner may appoint an additional trustee or additional trustees, and shall fix the amount of the bond of the substitute or additional trustee or trustees; the trustee or trustees and their counsel shall receive such compensation as the judge may allow within a maximum approved by the commission; (3) may for cause shown, and with the approval of the commis-

sion, in accordance with section 20 (a) of the Interstate Commerce Act as amended, authorize the trustee or trustees to issue certificates for cash, property, or other consideration approved by the judge, for such lawful purposes and upon such terms and conditions and with such security and such priority in payments over existing obligations, secured or unsecured, as might in an equity receivership be lawful; (4) shall require the debtor, at such time or times as the judge may direct and in lieu of the schedules required by section 7 of this Act, to file such schedules and submit such other information as may be necessary to disclose the conduct of the debtor's affairs and the fairness of any proposed plan; (5) shall determine a reasonable time within which the claims and interests of creditors and stockholders may be filed or evidenced and after which no such claim or interest may participate in any plan except on order for cause shown; the manner in which such claims and interests may be filed or evidenced and allowed, and, for the purposes of the plan and its acceptance, the division of creditors and stockholders into classes according to the nature of their respective claims and interests; (6) shall cause reasonable notice of such determination, or of the dismissal of the proceedings, or the allowance of fees or expenses, to be given creditors and stockholders by publication or otherwise; (7) if a plan of reorganization is not proposed or accepted, or, if proposed and accepted, is not confirmed, within such reasonable time as the judge may, upon cause shown and after considering any recommendation which has been filed by the commission, allow, may dismiss the proceeding; (8) may, within such maximum limits as are fixed by the commission, as elsewhere provided in subdivision (f) of

this section, allow a reasonable compensation for the services rendered and reimbursement for the actual and necessary expenses incurred in connection with the proceeding and plan by officers, parties in interest, reorganization managers, and committees or other representatives of creditors or stockholders, and the attorneys or agents of any of the foregoing, and by such assistants as the commission with the approval of the judge may specially employ; and (9) may on his own motion or at the request of the commission refer any matters for consideration and report, either generally or upon specified issues, to one of several special masters who shall have been previously designated to act as special masters in any proceedings under this section by order of any Circuit Court of Appeals and may allow such master a reasonable compensation for his services.

The Circuit Court of Appeals of each circuit shall designate three or more members of the bar as such special masters whom they deem qualified for such services, and shall from time to time revise such designations by changing the persons designated or reducing or adding to their number, as the public interest may require: *Provided, however,* That there shall always be three of such special masters qualified for appointment in each circuit who shall in their respective circuits hear any matter referred to them under this section by a judge of any District Court. For all purposes of this section claims against a railroad corporation which would have been entitled to priority over existing mortgages if a receiver in equity of the property of the debtor had been appointed by a Federal court at the date of the filing of the petition hereunder shall be entitled to such priority, and holders of such claims shall be treated as a separate class of

creditors. If in any case in which the issues have not already been tried under the provisions of subdivision (a) of this section any of the debtor's creditors shall, prior to the hearing provided for in subdivision (c), clause (2) of this section, appear and controvert the facts alleged in the petition, the judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, and unless the material allegations of the petition are sustained by the proofs shall dismiss the petition. Any creditor or stockholders shall be heard on the question of the permanent appointment of any trustee or trustees, the proposed recommendation, approval, or confirmation of any reorganization plan, and upon filing a petition for leave to intervene on such other questions arising in the proceeding as the judge shall determine. The debtor, or the trustees if appointed, shall within fifteen days or, upon cause shown, such other time as may be directed by the judge, prepare (1) a list of all known bondholders and creditors of, or claimants against, the debtor or its property, and the amounts and character of their debts, claims, and securities, and the last known post-office address or place of business of each creditor or claimant, and (2) a list of the stockholders of the debtor, with the last known post-office address or place of business of each. The contents of such lists shall not constitute admissions by the debtor or the trustees in a proceeding under this section or otherwise. Such lists shall be open to the inspection of any creditor or stockholder of, or claimant against, the debtor, during reasonable business hours, upon application to the debtor or trustees, as the case may be.

(d) Before creditors and stockholders of the debtor are asked finally to accept any plan of reorganization,

the Interstate Commerce Commission shall after due notice hold a public hearing at which the debtor shall present its plan of reorganization and at which, also, such a plan may be presented by the trustee or trustees, or by or on behalf of creditors of the debtor, being not less than 10 per centum in amount of any class of creditors. Following such hearing, the commission shall render a report in which it shall recommend a plan of reorganization (which may be different from any which has been proposed) that will, in its opinion, be equitable, will not discriminate unfairly in favor of any class of creditors or stockholders, will be financially advisable, will meet with the requirements of subdivision (g) of this section, and will be compatible with the public interest. In such report the commission shall state fully the reasons for its conclusions, and it may thereafter, upon petition for good cause shown, and upon further hearing if the commission shall deem necessary, modify any of its recommendations and conclusions in a supplemental report stating the reasons for such modification Thereafter the plan of reorganization recommended by the commission shall be submitted in such manner as the commission may direct to the creditors and stockholders of the debtor for acceptance or rejection, together with the report or reports of the commission thereon; and the commission may at the same time afford an opportunity to accept or reject any other plan of reorganization filed as in this subdivision (d) provided.

(e) A plan of reorganization shall not be finally approved by the commission until it has been accepted in writing and such acceptance has been filed in the proceeding by or on behalf of creditors holding two-thirds in amount of the claims of each class whose claims or interests would be affected by the plan,

and by or on behalf of stockholders of the debtor holding two-thirds of the stock of each class: *Provided, however,* That if adequate provision is made in the plan for the protection of the interests, claims, and liens of any class of creditors or stockholders in the manner provided in clauses (5) and (6) of subdivision (g) of this section, then the acceptance of the plan by such class of creditor or stockholders shall not be requisite to the approval of the plan: *And provided further,* That the acceptance of stockholders shall not be requisite to the confirmation of the plan if (1) the judge shall have determined (a) that the corporation is insolvent, or (b) that the interests of stockholders will not be adversely affected by the plan, or (c) that the debtor has pursuant to authorized corporate action accepted the plan, and its stockholders are bound by such acceptance. For the purposes of this section acceptance by a creditor or stockholder shall include acceptance in writing executed by him; or acceptance by his duly authorized attorney or committee acting under authority executed by him subsequent to the recommendation of the plan by the commission. Upon acceptance of the plan in accordance with the provisions of this subdivision (e) the commission may, without further proceedings, grant authority for the issue of any securities, assumption of obligations, transfer of any property, or consolidation or merger of properties, to the extent contemplated by the plan consistent with the purposes of the Interstate Commerce Act as amended. If the United States of America is directly a creditor or stockholder, the Secretary of the Treasury is hereby authorized to accept or reject a plan in respect of the interests or claims of the United States.

(f) If the plan recommended by the commission is accepted as provided in subdivision (e), (the commission shall thereupon certify the plan to the court together with its approval thereof and that the same has been so accepted, together with a report of the proceedings before it and its conclusions thereon. If the plan accepted as provided in subdivision (e) differs from the plan recommended by the commission it shall, upon acceptance, be submitted to the commission, which shall hear all interested parties upon such notice and subject to such rules and regulations as it shall prescribe. If after such hearing the commission determines that the accepted plan in its opinion is equitable and will not discriminate unfairly in favor of any class of creditors or stockholders; will be financially advisable; will meet the requirements of subdivision (g) of this section; and will be compatible with the public interest; the commission shall thereupon certify the plan to the court, together with its approval thereof and that the same has been duly accepted, and together with a report of the proceedings before it and its findings and conclusions thereon. The commission shall also, after hearing if necessary, fix the maximum compensation and reimbursement which may be allowed by the court pursuant to clause (8) of subdivision (c) of this section: *Provided,* That unless good and sufficient reasons appear therefor no allowance for fees or compensation shall be made to officers of corporations who have acted as managers or in any capacity in connection with the reorganization when such corporation had an interest in the matter. No plan of reorganization shall be confirmed in any proceeding under this section except upon the approval of the Interstate Commerce Commission certified to the court. If the

commission shall decline to issue such a certificate it shall file in the proceeding its decision, specifying the particular grounds upon which it bases its disapproval of the plan.

(g) Upon such approval by the commission, and after hearing such objections as may be made to the approved plan, the judge shall confirm the plan if satisfied that (1) the approved plan complies with the provisions of subdivision (b) of this section, is equitable and does not discriminate unfairly in favor of any class of creditors or stockholders; (2) all amounts to be paid by the debtor or by any corporation or corporations acquiring the debtor's assets, for services or expenses incident to the reorganization and cost of financing, have been fully disclosed and are reasonable, or are to be subject to the approval of the judge; (3) the offer of the plan and its acceptance are in good faith and have not been made or procured by any means or promises forbidden by this Act; (4) the approved plan provides for the payment of all costs of administration and other allowances made by the court, except that compensation or reimbursement provided for in subdivision (c), clause (8) of this section may be paid in securities provided for in the plan if those entitled thereto will accept such payment and the court finds such compensation reasonable; (5) the approved plan provides, with respect to stockholders of any class the acceptance of which is requisite to the confirmation of the plan, and who would not become bound by the plan under the provision of subdivision (h) of this section, and of which more than one-third have not accepted the plan, adequate protection for the realization by them of the value of their equity, if any, in the property of the debtor dealt with by the

plan either by a sale of the property at not less than a fair upset price, or by appraisal and payment in cash either of the value of their stock or, at the objecting stockholder's election, of the value of the securities, if any, allotted to such stock under the plan; (6) the plan provides with respect to any class of creditors, the acceptance of which is requisite to the confirmation of the plan, and who would not become bound by the plan under the provisions of subdivision (h) of this section, adequate protection for the realization by them of the value of their securities, liens, and claims, either (a) by the sale of such property subject to their liens, if any, or (b) by the sale free of such liens at not less than a fair upset price, and the transfer of such liens to the proceeds of such sale, or (c) by appraisal and payment in cash of either the value of such liens and claims or, at the objecting creditors' election, the value of the securities allotted to such liens and claims under the plan. Section 57, clause (h) of this Act shall be applicable to the appraisal of securities under this section, and the value of the unpaid balance shall be appraised as an unsecured claim; and (7) the debtor, and every other corporation issuing securities or acquiring property under the plan, is authorized by its charter or by applicable State or Federal laws, upon confirmation of the plan, to carry out the plan. In the case of a sale or appraisal under clause (5) or (6) of this subdivision (g) the court shall refer to the commission for its consideration and determination the amount to be fixed as the upset price and the appraisal of any securities.

(h) Upon such confirmation the provisions of the plan shall be binding upon (1) the corporation, (2) all stockholders if the judge shall have determined (a)

that the corporation is insolvent, or (b) that the interests of stockholders will not be adversely affected by the plan, or (c) that the debtor has, pursuant to authorized corporate action accepted the plan and its stockholders are bound by such acceptance, (3) all stockholders of each class of which two-thirds in amount shall have accepted the plan, (4) all creditors whose claims are payable in cash in full under the plan, (5) all creditors entitled to priority under subdivision (c) of this section, whose claims are not payable in cash in full under the plan, provided two-thirds in amount of such creditors shall have accepted the plan in writing filed in the proceeding, (6) all other unsecured creditors, provided two-thirds in amount of such creditors shall have accepted the plan in writing filed in the proceeding, and (7) all secured creditors of each class of which two-thirds in amount shall have accepted the plan. The confirmation of the plan shall discharge the debtor from its debts except as provided in the plan. Upon confirmation of the plan by the judge, the debtor and other corporations affected by the plan, or organized or to be organized for the purpose of carrying out the plan, shall, subject to the jurisdiction of the Commission, have full power and authority to put into effect and carry out the plan and the orders of the judge relative thereto, the laws of any State or the decision or order of any State authority to the contrary notwithstanding. In the event that the judge should disapprove the plan he shall file an opinion stating his reasons therefor.

(i) The provisions of sections 721, 722, 723, 724, and 725 of the Revenue Act of 1932 shall not apply to the issuance, transfers, or exchange of securities or filing of conveyances to make effective any plan of

reorganization confirmed under the provisions of this section.

(j) Upon the confirmation of the plan the property dealt with by the plan, when transferred and conveyed to the debtor or other corporation or corporations provided for by the plan, or if no trustee or trustees have been appointed when held by the debtor pursuant to the plan, shall, as the court may direct, be free and clear of all claims of the debtor, its stockholders and creditors, except such as may consistently with the provisions of the plan be reserved in the order confirming the plan or directing such transfer and conveyance, and the court may direct the trustee or trustees, or if there be no trustee or trustees the debtor, to make any such transfer and conveyance, and may direct the debtor to join in any such transfer or conveyance made by the trustee or trustees. Upon the termination of the proceeding a final decree shall be entered discharging the trustee or trustees, if any, making such provisions as may be equitable, and closing the case.

(k) If a receiver of all or any part of the property of a corporation has been appointed by a Federal or State court, whether before or after this amendatory Act takes effect, the railroad corporation may nevertheless file a petition or answer under this section at any time thereafter, but if it does so and the petition is approved the trustee or trustees appointed under the provisions of this section shall be entitled forthwith to possession of such property, and the judge shall make such orders as he may deem equitable for the protection of obligations incurred by the receiver and for the payment of such reasonable administrative expenses and allowances in the prior proceeding as may be fixed by the court appoint-

ing said receiver within maximum limits approved by the commission. If a receiver has been appointed by a Federal or State court prior to the dismissal under subdivision (c), clause (7), of a proceeding under this section, the judge may include in the order of dismissal appropriate provisions directing the trustee to transfer possession of the debtor's property within the territorial jurisdiction of such court to the receiver so appointed, upon such terms as the judge may deem equitable for the protection of obligations incurred by the trustee and for the payment of administrative expenses and allowances in the proceeding hereunder. For the purposes of this section the words "Federal court" shall include the district courts of the United States and of the Territories and possessions to which this Act is or may hereafter be applicable, the Supreme Court of the District of Columbia, and the United States Court of Alaska.

(l) In addition to the provisions of section 11 of this Act for the staying of pending suits against the debtor, such suits shall be further stayed until after final decree the judge may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree.

(m) A certified copy of an order confirming a plan of reorganization shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the order was made. A certified copy of an order directing the transfer and conveyance of the property dealt with by the plan as provided in subdivision (j) of this section shall be evidence of the transfer and conveyance of title accordingly, and if recorded shall impart the same notice that a deed if recorded would impart.

(n) In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and his property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed.

(o) No judge or trustee acting under this Act shall change the wages or working conditions of railroad employees, except in the manner prescribed in the Railroad Labor Act, or as set forth in the memorandum of agreement entered into in Chicago, Illinois, on January 31, 1932, between the executives of of twenty-one standard labor organizations and the committee of nine authorized to represent Class 1 railroads.

(p) No judge or trustee acting under this Act shall deny or in any way question the right of employees on the property under his jurisdiction to join the labor organization of their choice, and it shall be unlawful for any judge, trustee, or receiver to interfere in any way with the organizations of employees, or to use the funds of the railroad under his jurisdiction, in maintaining so-called company unions, or to influence or coerce employees in an effort to induce them to join or remain members of such company unions.

(q) No judge, trustee, or receiver acting under this Act shall require any person seeking employment on the property under his jurisdiction to sign any contract or agreement promising to join or to refuse to join a labor organization; and if such contract has been enforced on the property prior to the property

coming under the jurisdiction of said judge, trustee, or receiver, then the said judge, trustee, or receiver, as soon as the matter is called to his attention, shall notify the employees by an appropriate order that said contract has been discarded and is no longer binding on them in any way.

(r) The term "railroad corporation" as used in this Act means any common carrier by railroad engaged in the transportation of persons or property in interstate commerce, except a street, suburban, or interurban electric railway which is not operated as a part of a general railroad system of transportation or which does not derive more than 50 per centum of its operating revenues from the transportation of freight in standard steam railroad freight equipment.

(s) In proceedings under this section, claims for personal injuries to employees of a railroad corporation, and claims of personal representatives of deceased employees of a railroad corporation arising under State or Federal laws, shall be preferred claims against the assets of such railroad corporation in receivership or in reorganization as herein provided, such claims to be subordinate only to costs of administration of such receivership or reorganization.

Section 77B of the Bankruptcy Act (July 1, 1898, C. 541, Sec. 77B, as added by Act of June 7, 1934, C. 424, Sec. 1, 48 Stat. 912; U. S. C. A., Title 11, Sec. 207):

Subclause (a):

(a) * * * the court in which such order approving the petition or answer is entered shall, during the pendency of the proceedings under this section, have exclusive jurisdiction of the debtor and its property wherever located for the purposes of this section * * *

* * * * *

Subclause (c) (1):

(c) * * * (1) may, after hearing upon notice to the debtor and to such others as the judge may determine temporarily continue the debtor in possession or appoint a trustee or trustees of the debtor's estate, and shall require the debtor, or such trustee or trustees, if appointed, to give such notice as the order may direct to creditors and stockholders and to cause publication thereof to be made at least once a week for two successive weeks of a hearing to be held within thirty days after such appointment, or, if no such appointment, within thirty days after the approval of the petition or answer, at which hearing or any adjournment thereof, or at any subsequent hearing after notice, the judge may make permanent any such appointment, or terminate it and restore the debtor to possession, or, if no trustee has been appointed, may appoint a trustee or trustees, and may remove any such trustee or trustees and continue the debtor in possession or appoint a substitute trustee or trustees and may appoint an additional trustee or trustees;

Subclause (c) (2):

(c) * * * (2) * * * every such trustee * * * shall have all the title and shall

exercise, subject to the control of the judge and consistently with the provisions of this section, all the powers of a trustee appointed pursuant to section 44 of this Act * * *".

* * * * *

Subclause (c) (10):

(c) * * * the judge * * * (10) in addition to the provisions of section 11 of this Act for the staying of pending suits against the debtor, may enjoin or stay the commencement or continuation of suits against the debtor until after final decree; and may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree * * *

* * * * *

Subclause (o):

(c) In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition or answer was approved.

EXCERPTS FROM CONGRESSIONAL DEBATES AND COMMITTEE REPORTS CONCERNING THE RAILROAD SECTION OF THE BANKRUPTCY ACT AND RELATED SUBDIVISION OF SECTION 74

Excerpts from House Committee Report (Report No. 1897, 72d Cong. 2d Sess. pp. 5, 6-7) of the Committee on the Judiciary:

"Section 76 is entitled 'Reorganization of Railroads Engaged in Interstate Commerce.' Railroads are at this time excluded from the operation of the bankruptcy law. The neces-

sity for the enactment of this section grows out of the present expensive, protracted, confusing, and inefficient administration of affairs of railroad companies engaged in interstate commerce in equity receiverships. The necessity for its immediate enactment results from the fact that at the present time many of the railroad organizations of the country confront the necessity of reorganization. They have reached the limit of their ability to borrow from the Reconstruction Finance Corporation. They must either reorganize under some arrangement such as is provided for by this section, or be administered in equity receiverships. The protracted period of such administration, the duplication of expense incident to ancillary receiverships, the waste, the opportunity for manipulation on the part of special groups, are too well known to require comment.

* * * * * *

"The commission is given the power to fix maximum compensation to reorganization managers, officers, parties in interest, committees, or other representatives of stockholders for services rendered and reimbursement for the actual and necessary expenses incurred in connection with the proceeding and plan.

"This should definitely put a stop to the wholesale plundering by reorganization managers, both by way of fees and for commissions covering new securities.

The section provides that where two-thirds of a class of creditors accept the plan, then the plan is binding upon that particular class of creditors and the minority must accept the new securities issued under the plan of reorganization. This is fair because all the minority of a particular class should expect is that a fair and equitable plan be devised, and if the plan is fair then all they are entitled to is equal participation in the

new securities. The bill provides adequate machinery for the development of a fair and equitable plan.

The Report of Mr. Hastings (Senate Report 1215, to accompany H. R. 14359 72d Cong. 2d Sess. pp. 4-5), referring to Section 74 of the Bankruptcy Act:

> There was a sincere effort made in the subcommittee to provide in this bill some safe relief for the debtor as against his secured creditors. Under normal conditions a proposal to affect in any way a secured creditor by any bankruptcy proceedings would be somewhat shocking. It is a well-known fact, however, that under the present bankruptcy law the Federal court has sufficient control over the estate of a bankrupt to prevent foreclosure of a mortgage and other like enforcement of liens until the court has disposed of the litigation before it. Bearing this in mind, the committee sought by legislative action to authorize the court to extend that authority, providing it be equitable and feasible. It distinctly provides, however, that such extension or composition shall not impair the lien of any secured creditor, but shall affect only the time and method of its liquidation.
>
> This does not go as far as some would like to go and under normal conditions it goes farther than others would be willing to go. It is believed, however, that a careful administration of the law will prevent it from working any great hardship upon the creditor and will at the same time enable many distressed debtors to recover somewhat from the shocking conditions which confront them.
>
> It will be observed that section (h) of the House bill in this respect has been modified so that it applies only to "secured debts, the security for which is in the actual or constructive possession of the debtor or of the custodian

or receiver." It was believed that if every form of collateral that was deposited as a security for a loan should be subjected to review by the court in any proceedings under this act that it could but result in a greater value of collateral being required by the person or institution granting the loan in the first instance. The tendency would be to further restrict credit.

Excerpts from Debates in the House (76 Congressional Record, Part 3, Page 2908):

Mr. SUMNERS of Texas. With regard to the railroad features of the bill—and I am touching only a few high spots—it is recognized, I believe, by everybody who understands the situation that many of the railroad companies must soon reorganize They must reorganize through equity receiverships or reorganize under some such proceeding as is provided in this bill. The general plan with regard to individuals, with regard to corporations which are not railroads, is identical except as it is required to be modified by reason of the difference in the character of the things being dealt with.

With regard to the plan for the reorganization of the railroads, and I am not speaking technically accurately, an effort has been made to utilize the organization and expert knowledge of the Interstate Commerce Commission, to assist the court, sitting as a court of bankruptcy, and in a sense relate the Interstate Commerce Commission to the court of bankruptcy much as a master in chancery is related to the court whose master he is.

* * * * *

76 Congressional Record, Part 3, Page 2916:

Mr. GREGORY. The story of the railroad reorganization in the United States is a very

sordid one, as we find it, to the advantage and power of certain financial groups in this country. I am for this bill because of the reorganization plan that is incorporated within it. Regardless of the rights of stockholders, of creditors, and of the public welfare, we have seen great railroad corporations wrecked in order to satisfy the greed of certain financial interests in this country. Under the provisions of this bill a safe and sane way is provided for the reorganization of these great railroad corporations.

* * * * *

76 Congressional Record, Part 3, Page 2917:

Mr. RAYBURN. Last year 122 railroads in the United States failed to earn their fixed charges. The condition is no better. It is inevitable that under the old law or under the new law, these railroads must pass through the mill. They must go through the wringer. There is not a question in the world about it. I believe, therefore, that in order to save confidence, in order to protect stockholders, in order to protect bondholders, in order to protect everyone who is a creditor of a railroad, and the public as well, we should pass this or some other legislation at the earliest possible hour, to put an end to these long-drawn-out, these expensive, these unnecessary, and, in many instances, these disgraceful receiverships that have happened in the past.

Some object that this bill substitutes the commission, an agent of the Congress, for the courts. As I understand it, it does nothing of the sort. All the proceeding is under the jurisdiction of the court and must have the court's approval before it becomes effective. This bill proposes to place the expert services of the Interstate Commerce Commission at the disposal of the court. Instead of having to

rely upon some master who would have to set up his own staff, and who would have no, or but little experience in these matters, the court would rely upon the Commission, which would act very much as a master would be required to do. The bill provides that the commission shall take off of the court all of the burden of holding hearings on the proposed plans of reorganization, of recommending a plan to creditors and stockholders who would be affected, of authorizing the issuance of securities and making orders conforming to the Interstate Commerce Act, and of submitting to the court a complete record on which it could determine whether or not, in fairness and justice to all concerned, a plan of reorganization acceptable to two-thirds of the creditors in amount for each class should be approved. If the court does not find that the plan acceptable to the creditors and to the Commission is equitable, the court will disapprove it. All of this looks toward prompt, equitable, and economical proceedings.

* * * * *

Excerpt from 76 Congressional Record, Part 3, Page 2923:

Mr. LA GUARDIA. In the first place, railroads are now exempted from the provisions of the bankruptcy law. When a railroad gets into financial difficulty a creditor applies for an equity receivership. We have had very sad experience with equity receiverships of railroads.

Extracts from Debates in the Senate, 76 Congressional Record, Part 5, Page 4880:

Mr. HASTINGS. As I have stated, I think the adoption of the section pertaining to the railroads is the more important of the two, and for two reasons. First, the railroads are

a public necessity; and secondly, they are not so readily adaptable to equity receiverships as are ordinary corporations. An equity receivership, as everyone knows, requires an ancillary receiver in every jurisdiction where the railroad corporation has property. In addition to that, the railroad must continue to be operated, and the operation under such a complicated scheme is frightfully expensive and necessarily less efficient.

The section proposed gives to the Federal court in the jurisdiction where the railroad has its principal offices, or where it has its domicile, control over the entire property of the railroad, regardless of where it may be located. This means that one receiver or one trustee is all it is necessary to appoint in order to control the whole operation of that particular road.

* * * * *

It has been pointed out that, under the present conditions, it is not possible for a railroad corporation to make any adjustment with any class of security holders because of its inability to get all of them to agree to the plan. It is well known that there are always some creditors who refuse to join in corporate reorganization, hoping and believing that they can thereby secure for themselves a greater amount for their holdings than is being given the group that is willing to make such readjustments.

Excerpt from 76 Congressional Record, Part 5, Page 4877:

Mr. HASTINGS. This section distinctly provides also that the terms of an extension proposal may extend the time of payment of either or both unsecured debts as well as secured debts, provided the security is in the actual or constructive possession of the debtor or of the custodian or the receiver.

Excerpt from 76 Congressional Record, Part 5, Pages 5106, 5107:

Mr. HASTINGS. After the bill had been voted out of the committee in the House, my recollection is, but before it passed the House, I took the bill, together with the measure which had been prepared by the Department of Justice, and submitted the whole question to the Interstate Commerce Commission, asking them to give to me, for the benefit of the Senate, their judgment regarding this legislation. They replied with a very long report, which was printed, with other criticisms and statements by other people relative to this subject, and is now a public document.

I want to call particular attention, however, to some of the things said by the Interstate Commerce Commission in that report. They state:

"We shall first consider the advantages over present procedure which the two bills have in common."

Referring to that which had been passed by the House and that which had been proposed by the Senate:

"As we see them, these advantages are as follows:

"1. The word 'receivership' is in ill repute and creates alarm among investors, but reorganizations can now seldom be accomplished except through receiverships. These bills would substitute a trusteeship, which would in practical effect be very like a receivership but would probably arouse less apprehension.

"2. The expense of so-called ancillary receiverships in different States or parts of the country, which are now frequently necessary, would be avoided.

"3. Creditors and stockholders would have a better opportunity to be heard in regard to appointments of the trustees than they now

have to be heard with respect to the appointment of receivers, due to the provision for a temporary appointment to be followed, after 30 days and a hearing, by a permanent appointment.

"4. The opportunity of creditors and stockholders to suggest and have considered a plan of reorganization different from that proposed by the reorganization managers would probably be somewhat better than at present, due to the fact that such an opportunity is provided for specifically in the bills.

"5. Since the bills provide that the plan, when adopted, shall be binding upon dissenting stockholders and unsecured creditors of any class which has accepted a plan (the House Bill extends this to secured creditors also), it is possible that reorganization could be accomplished without sale of the property. Even if there were a class or classes of non-accepting stockholders or creditors, a sale might be avoided if appraisal were adopted as the method of determining the cash value of their interests.

"6. The effect of the bills would probably be to expedite reorganization, in comparison with the process under receivership, although this is not certain."

In that connection I may say that since that was written we have consulted with the Interstate Commerce Commission, and think that we have made it quite certain that it could be done very much more quickly.

"7. Due to the specific authority given to the commission to fix at least a maximum for certain reorganization expenses, there would probably be a greater measure of control over these expenses than at present, although this is not certain, for reasons which are stated below.

"8. The commission would have more specific authority than at present to consider the equity of the plan, so far as the various classes of creditors and stockholders are concerned."

Excerpt from 76 Congressional Record, Part 5, Page 5128:

Mr. ROBINSON of Arkansas. One of the advantages of this plan is that it provides a uniform system for the reorganization of such railroads as may be insolvent. Without this legislation we will have just as many different plans of reorganization as there are railroads thrown into courts of equity. That of itself might or might not be a great disadvantage. Nevertheless it seems to me that it is preferable to provide a method which is uniform, so as to assure similar if not identical treatment for the creditors and stockholders of the various railroads that may find it necessary to take advantage of the act.

Another advantage is to be found in the diminished costs which will be incurred under this plan. We all know that under the system which has heretofore prevailed the costs of railway reorganizations have been enormous and in many instances excessive. Lacking any uniform procedure, prolonged litigation usually occurs and many of the assets which ought to go to the satisfaction of the claims of creditors have been absorbed in costs and attorneys' fees.

The third reason for the legislation is that it tends to promote prompt action respecting railroad reorganizations that are necessary.

Excerpt from 76 Congressional Record, Part 5, Page 5129:

Mr. ROBINSON of Arkansas. In the next place, certain items of expense are expressly

limited; and, in the third place, practically all fees allowable under the bill must be approved or recommended by the Interstate Commerce Commission. That will not only strengthen the idea of uniformity, so far as it ought to be strengthened, and prevent the allowance of extravagant or exorbitant costs and fees, but it will make sure that a body that knows exactly what service has been performed shall pass upon the compensation for the service.

Excerpt from 76 Congressional Record, Part 5, Page 5134:

Mr. SMITH. I do not consider that this bill will remedy the situation at all.

Mr. LONG. That is not the question. Is it not better than what we have now?

Mr. SMITH. No.

Mr. LONG. Why not?

Mr. SMITH. For the simple reason that this bill does not in my opinion touch or come anywhere near touching the solution of the problem which has brought about the present condition of the railroads.

Mr. LONG. I admit that, but the fact is that it is better by far, because it reduces expenses, simplifies the process, avoids receivership, lessens the time involved, causes less calamity, and, while it is not the solution which both the Senator and I would want, it is much better than what we have today.

Excerpts from Debates in the House on Concurrence in Senate Amendments, 76 Congressional Record, Part 5, Page 5356:

Mr. GOLDSBOROUGH. There are many Members who feel it was a great mistake to pass that part of the Reconstruction Finance Corporation act which helped the railroads; who feel the country would be much better

off if the railroads were now operating under receiverships. While I and other Members want to go along, if this is a railroad bill it will cause a great deal of hesitation. If it is a bill to keep the railroads running that are obviously insolvent, then I do not think we ought to pass it. I would like the gentleman to comment on that.

Mr. Sumners of Texas. May I make this suggestion to the gentlemen? I suppose no harm could be done by the statement being made on the floor of the House that there are a number of railroads in very acute distress. I believe it is recognized that those railroads will have to be reorganized in effect. They will have to be reorganized under some such plan as is provided in this bill, or reorganized under the plan that is now in operation. Gentlemen who are advised know that under the plan now in operation there is in this country a thing that amounts almost to a reorganization racket, and it is hoped, also, that under this plan it will very much expedite reorganization. Now, speaking of this being a railroad bill——

Mr. Goldsborough. I want to say that I was simply asking for information.

Mr. Sumners of Texas. Yes. I understand. To be candid about it, this is the situation: If those railroads begin to go into the hands of receivers now nobody knows what will happen to the insurance companies. Nobody knows how far that thing is going. The situation is regarded by the present administration, by Mr. Roosevelt and his associates, and I believe I may say it is regarded by members of the Interstate Commerce Commission and the committee dealing with railroads, as being a very serious situation.

Excerpt from 76 Congressional Record, Part 5, Page 5359:

> Mr. GARBER. The Government has loaned to the railroads $350,000,000 or more. What protection does this bill give the Government?
>
> Mr. PARKER of New York. It protects the Government just as much as the Government is protected now, no more and no less. But, as the gentleman from New York wisely said, your reorganizations, your receiverships have been tremendously expensive. Hundreds of millions of dollars have been paid out which can be saved if this bill is passed as it is.

Excerpt from 76 Congressional Record, Part 5, Page 5359:

> Mr. BRIGGS. I understand that much of this proposal for bankruptcy of railroads is to avoid receiverships and the expense incident thereto. Is there any safeguard to avoid the accumulation or allowance of huge fees by the Federal courts?
>
> Mr. DYER. Yes; that is one of the things that alone is worthy of the careful consideration of this House. There have been outrageous expenses involved in receiverships and in the reorganization of railroads. There is no doubt about that. This, in my opinion, will lessen the expense to a great extent, and these railroads, if they must be reorganized, can be reorganized without putting the stockholders and others to the great expense involved in previous cases.

PETITION FOR ORDER No. 35

Filed December 28, 1933

In the District Court of the United States for the Northern District of Illinois, Eastern Division

No. 53209

In the Matter of The Chicago, Rock Island and Pacific Railway Company, Debtor

Petition of Trustees Respecting Extension of Equipment Trust Maturities

And now come the Trustees and respectfully show to the Court:

1. Order No. 28, entered herein November 28, 1933, directed the Trustees to defer the payment of the rentals due December 1, 1933, under Equipment Trust Agreements of Debtor, Series L and Series Q, constituting the principal instalments of Equipment Trust Certificates maturing December 1, 1933, in the aggregate amount of $285,000 of Series L and $468,000 of Series Q, together with interest thereon.

Said Order further authorized the Trustees to negotiate with the Trustees of said Equipment Trusts and with the holders of the Certificates issued thereunder, for the extension of the said Equipment Trust Certificates due December 1, 1933, upon terms that would preserve the equipment for use in the operation of the trust estate.

2. Pursuant to said Order, the Trustees are now negotiating with the holders of Equipment Trusts, Series L and Series Q, for an extension of the maturities of said certificates due December 1, 1933.

3. Since entering into the discharge of their duties as Trustees, pursuant to Order No. 21, entered

November 22, 1933, the Trustees have given further study to the equipment trust obligations of the trust estate, and they believe it is feasible and practicable to enter into agreements with the holders of said obligations to extend all of the maturities of equipment trust obligations maturing during the period of a full year, that is, from December 1, 1933, to November 30, 1934, inclusive.

4. There are now outstanding the following Equipment Trust Certificates of The Chicago, Rock Island and Pacific Railway Company:

Series and date of Trust	Trustee	Amount of Certificates Originally Issued	Rate	Amount Now Outstanding	Maturity
			Per cent		
Series I, January 15, 1920.	Guaranty Trust Company of New York.	$8,117,250	6	$1,080,000	$540,000 Annually, January 15.
Series L, June 1, 1923.	The New York Trust Company.	8,550,000	5	2,850,000	$285,000 Semi-annually June 1; December 1.
Series M, October 1, 1924.	Marine Midland Trust Company of New York.	3,760,000	5	376,000	$188,000 Semi-annually April 1; October 1.
Series N, August 1, 1925.	The Chase National Bank of the City of New York.	5,400,000	4½	2,520,000	$360,000 Annually August 1.
Series O, July 1, 1927.	The Chase National Bank of the City of New York.	8,515,000	4½	5,895,000	$655,000 Annually July 1.
Series P, August 1, 1929.	The Chase National Bank of the City of New York.	9,450,000	4½	6,930,000	$630,000 Annually August 1.
Series Q, June 1, 1930.	The Chase National Bank of the City of New York.	14,040,000	4½	11,232,000	$468,000 Semiannually June 1; December 1.

5. Principal instalments of Equipment Trust Certificates maturing in the twelve months' period December 1, 1933, to November 30, 1934, with the interest due thereon by the terms of the trust agreements

(that is, if no extension of principal be made), are as follows:

Date	Series	Principal	Interest	Total
Dec. 1, 1933	L	$285,000	$71,250.00	$356,250.00
Dec. 1, 1933	Q	468,000	252,720.00	720,720.00
Jan. 1, 1934	O		132,637.50	132,637.50
Jan. 15, 1934	I	540,000	32,400.00	572,400.00
Feb. 1, 1934	N		56,700.00	56,700.00
Feb. 1, 1934	P		155,925.00	155,925.00
Apr. 1, 1934	M	188,000	9,400.00	197,400.00
June 1, 1934	L	285,000	64,125.00	349,125.00
June 1, 1934	Q	468,000	242,190.00	710,190.00
July 1, 1934	O	655,000	132,637.50	787,637.50
July 15, 1934	I		16,200.00	16,200.00
Aug. 1, 1934	N	360,000	56,700.00	416,700.00
Aug. 1, 1934	P	630,000	155,925.00	785,925.00
Oct. 1, 1934	M	188,000	4,700.00	192,700.00
Total		4,067,000		

6. Each of the Equipment Trust Agreements mentioned above contains provision whereby, in the event of default in the payment of amounts constituting the principal of or interest upon said certificates, the Trustee thereof may and, upon demand of a majority of the holders of the certificates, shall declare due the principal of the entire amount of certificates outstanding, and may seize the equipment, the title to which, by the terms of the trust agreement, remains in the Trustee thereof until after all of the certificates have been paid in full, with interest. The debtor, The Chicago, Rock Island Pacific Railway Company, has, however, a large equity in the equipment as represented by the amount of certificates already redeemed and paid.

In the judgment of the Trustees, the units of equipment covered by the several Equipment Trusts above set forth are necessary in the proper operation of the

trust estate, and steps should be taken, by negotiation or otherwise, to avert a loss of such equipment through default in the Trust Agreements. The Trustees cannot forsee clearly at this time that they will have funds in their hands to make the payments of principal and interest set forth above, and in order to protect their cash position regard it as desirable to negotiate with the holders of all of the said Equipment Trust Certificates for an extension of time for the payment of the principal instalments thereof, on terms that will preserve the equipment for use in the trust estate. By deferring a full year's maturities, there will be no discrimination between the holders of certificates of the respective series.

WHEREFORE, the Trustees pray that such Order may be entered herein as to the Court may seem proper.

FRANK O. LOWDEN,
JAMES E. GORMAN,
JOSEPH B. FLEMING,
Trustees.

STATE OF ILLINOIS,
County of Cook, ss:

JAMES E. GORMAN, being duly sworn, deposes and says that he is one of the Trustees whose names are subscribed to the foregoing petition; that he has read the said petition and knows the contents thereof; that the same is true to the best of his knowledge and belief; and that the said petition is filed in good faith.

JAMES E. GORMAN.

Subscribed and sworn to before me this 28th day of December 1933.

[SEAL] W. J. GEDL, *Notary Public.*

ORDER No. 35

Entered December 28, 1933

In the District Court of the United States for the Northern District of Illinois, Eastern Division

No. 53209

In the Matter of the Chicago, Rock Island and Pacific Railway Company, Debtor

Order Relating to Equipment Trust Maturities

On this day coming on to be heard the petition of the Trustees relative to equipment trust maturities of the Debtor, The Chicago, Rock Island and Pacific Railway Company, for the twelve months period between December 1, 1933, and November 30, 1934, and the Trustees appearing by Marcus L. Bell, W. F. Dickinson, and W. F. Peter, their solicitors, and the Court having heard the statements of counsel and being fully advised in the premises, it is

ORDERED,

1. That until the further order of this Court, the Trustees herein make no further payment on account of rentals, principal, interest or dividends due, or to become due, under any of the following Equipment Trust Agreements of the Debtor, The Chicago, Rock Island and Pacific Railway Company:

(1) Equipment Trust Agreement of January 15, 1920, Series I, with the Guaranty Trust Company of New York, as Trustee, under which there are now outstanding $1,080,000 of 6% Equipment Gold Notes.

(2) Equipment Trust Agreement and Lease of June 1, 1923, Series L, with The New York Trust Company, as Trustee, under which there are now outstanding $2,850,000 of 5% Equipment Trust Certificates.

(3) Equipment Trust Agreement and Lease of October 1, 1924, Series M, with The Marine Midland Trust Company of New York, as Trustee, under which there are now outstanding $376,000 of 5% Equipment Trust Certificates.

(4) Equipment Trust Agreement and Lease of August 1, 1925, Series N, with The Chase National Bank of the City of New York, as Trustee, under which there are now outstanding $2,520,000 of 4½% Equipment Trust Certificates.

(5) Equipment Trust Agreement and Lease of July 1, 1927, Series O, with The Chase National Bank of the City of New York, as Trustee, under which there are now outstanding $5,895,000 of 4½% Equipment Trust Certificates.

(6) Equipment Trust Agreement and Lease of August 1, 1929, Series P, with The Chase National Bank of the City of New York, as Trustee, under which there are now outstanding $6,930,000 of 4½% Equipment Trust Certificates.

(7) Equipment Trust Agreement and Lease of June 1, 1930, Series Q, with The Chase National Bank of the City of New York, as Trustee, under which there are now outstanding $11,232,000 of 4½% Equipment Trust Certificates.

2. That the Trustees be, and they hereby are, authorized and directed to negotiate with the Trustees of the said Equipment Trust Agreements and with the holders of the notes and certificates issued thereunder, for the formulation of a plan for the refinancing or deferring the payment of all notes or certificates of each of the said Series of Equipment Trusts maturing in the twelve months period from December 1, 1933, to November 30, 1924, inclusive, upon

such terms as will preserve the use of the equipment for use in the operation of the Trust Estate.

Enter:

JAMES H. WILKERSON,
Judge.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Charles M. Bates, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Notice filed December 28th A. D. 1933; Petition filed December 28th A. D. 1933. Order entered December 28, 1933, In re: The Chicago, Rock Island and Pacific Railway Company, Debtor No. 53209, now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago this 7th day of January, A. D., 1935.

[SEAL] CHARLES M. BATES,
Clerk.

PETITION FOR ORDER NO. 37

Filed December 28, 1933

In the District Court of the United States for the Northern District of Illinois, Eastern Division

No. 53209

In the Matter of the Chicago, Rock Island and Pacific Railway Company, debtor

Petition of Trustees for an Order Determining the Time and Manner for Creditors, Stockholders, and Claimants to File or Evidence Claims and Interests, and for Division of Creditors and Stockholders Into Classes

The undersigned, Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees of the Debtors herein, respectfully show:

1. That each of the Debtors herein has heretofore prepared and filed with the clerk of this Court, pursuant to order of court herein, a list of its bondholders, creditors, claimants, and stockholders, together with other information, as required by Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy.

2. That it is desirable that the Court shall now determine a reasonable time within which the claims and interests of creditors, stockholders, and claimants may be filed or evidenced, and the manner in which such claims or interests may be filed or evidenced and allowed, and, for the purposes of such plan of reorganization of the Debtors herein and its acceptance, to determine the division of creditors and stockholders into classes according to the nature of their respective claims and interests.

Wherefore, the said Trustees pray that an order be entered herein determining a reasonable time within which, and the manner in which, the claims and interests of creditors, stockholders, and claimants may be filed or evidenced, and determining the division of creditors and stockholders into classes, according to the nature of their respective claims and interests.

Respectfully submitted.

FRANK O. LOWDEN,
JAMES E. GORMAN,
JOSEPH B. FLEMING,
Trustees.

MARCUS L. BELL,
W. F. DICKINSON,
W. F. PETER,
1025 LaSalle Street Station, Chicago, Illinois,
Solicitors for Trustees.

STATE OF ILLINOIS,
County of Cook, ss.

James E. Gorman, being duly sworn, deposes and says that he is one of the Trustees whose names are subscribed to the foregoing petition; that he has read the said petition and knows the contents thereof; that the same is true to the best of his knowledge and belief, and that the said petition is filed in good faith.

JAMES E. GORMAN.

Subscribed and sworn to before me this 28th day of December 1933.

W. J. GEDL,
[SEAL] *Notary Public in and for the State and County aforesaid.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Charles M. Bates, Clerk of the United States District Court in and for the northern district of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original petition of trustees for an order determining the time and manner for creditors, stockholders, and claimants to file or evidence claims and interests, and for division of creditors and stockholders into classes, filed December 28, 1933, In re: The Chicago, Rock Island and Pacific Railway Company, debtor no. 53209, now remaining among the records of the said court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid court at Chicago, this 28th day of December, A. D. 1933.

[SEAL] CHARLES M. BATES,
Clerk.

Notice relating to petition respecting equipment trust maturities in the District Court of the United

States for the Northern District of Illinois, Eastern Division.

In the matter of The Chicago, Rock Island and Pacific Railway Company, debtor, no. 53209.

In Proceedings for the Reorganization of a Railroad

NOTICE

Guaranty Trust Company, of New York, trustee of The Chicago, Rock Island and Pacific Railway Company equipment trust, series I, Director General's No. 25.

The New York Trust Company, of New York, trustee of The Chicago, Rock Island and Pacific Railway equipment trust (issue of 1923), series L.

Marine Midland Trust Company of New York, trustee of The Chicago, Rock Island and Pacific Railway equipment trust (issue of 1924), series M.

The Chase National Bank of New York, trustee of The Chicago, Rock Island and Pacific Railway equipment trust (issue of 1925), series N.

The Chase National Bank of New York, trustee of The Chicago, Rock Island and Pacific Railway equipment trust (issue of 1927), series O.

The Chase National Bank of New York, trustee of The Chicago, Rock Island and Pacific Railway equipment trust (issue of 1929), series P.

The Chase National Bank of New York, trustee of The Chicago, Rock Island and Pacific Railway equipment trust (issue of 1930), series Q.

You are hereby notified that on Thursday, December 28, 1933, at 10 o'clock in the forenoon, or as soon thereafter as counsel may be heard, we shall present to His Honor Judge Wilkerson, in the court room usually occupied by him in the city of Chicago, the petition of the trustees, Frank O. Lowden,

James E. Gorman, and Joseph B. Fleming, respecting the payment of amounts constituting principal and interest obligations under the above-named equipment trusts, which petition will be substantially in the form of the enclosed copy; at which time you may appear if you see fit.

MARCUS L. BELL,
25 Broad Street,
New York.
W. F. DICKINSON,
W. F. PETER,
1025 La Salle Street Station.
Chicago, Illinois,
Attorneys for Trustees.

Received a copy of the above notice this 19th day of December 1933.

Guaranty Trust Company, of New York, Trustee of The Chicago, Rock Island and Pacific Railway Company Equipment Trust, Series I, Director General's No. 25; by Arthur E. Burke, Corp. Trust Officer.

The New York Trust Company of New York, Trustee of The Chicago, Rock Island and Pacific Railway Equipment Trust (Issue of 1923), Series L; by A. C. Downing, Vice President.

Marine Midland Trust Company of New York, Trustee of The Chicago, Rock Island and Pacific Railway Equipment Trust (Issue of 1924), Series M; by Arthur N. Hazeltine, Vice President.

The Chase National Bank of New York, Trustee of The Chicago, Rock Island and Pacific Railway Equipment

Trust (Issue of 1925), Series N; by C. E. Buckley, Second Vice President.

The Chase National Bank of New York, Trustee of The Chicago, Rock Island and Pacific Railway Equipment Trust (Issue of 1927), Series O; by C. E. Buckley, Second Vice President.

The Chase National Bank of New York, Trustee of The Chicago, Rock Island and Pacific Railway Equipment Trust (Issue of 1929), Series P; by C. E. Buckley, Second Vice President.

The Chase National Bank of New York, Trustee of The Chicago, Rock Island and Pacific Railway Equipment Trust (Issue of 1930), Series Q; by C. E. Buckley, Second Vice President.

ORDER NO. 37

Entered January 23, 1934

In the District Court of the United States for the Northern District of Illinois, Eastern Division

No. 53209

In the Matter of The Chicago, Rock Island and Pacific Railway Company, Debtor

Order Classifying Creditors and Stockholders and Determining the Time and Manner for Filing Claims of Certain Classes

On this day coming on to be heard the petition of Frank O. Lowden, James E. Gorman, and Joseph B.

Fleming, Trustees herein, for an order determining the time and manner for creditors, stockholders, and claimants to file or evidence claims and interests, and for division of creditors and stockholders into classes, and the Court having considered the matter and being fully advised in the premises, it is;

ORDERED,

I. For the purposes of any plan of reorganization that may be presented in these proceedings, the creditors and stockholders of the several Debtors in these proceedings, respectively, are divided into the following classes with respect to the appropriate Debtors:

CLASS 1. *Claims entitled to priority under the six-months' rule:*

Holders of claims against any of the said Debtors, jointly or severally, which would have been entitled to priority over existing mortgages if a receiver in equity of the property of such Debtor had been appointed by a Federal Court at the date of the filing of the respective petitions hereunder, as follows:

June 7, 1933, by—

The Chicago, Rock Island and Pacific Railway Company;

August 28, 1933, by—

St. Paul and Kansas City Short Line Railroad Company;

Rock Island, Arkansas and Louisiana Railroad Company;

October 24, 1933, by—

The Chicago, Rock Island and Gulf Railway Company;

Choctaw, Oklahoma and Gulf Railroad Company;

Peoria Terminal Company;

Rock Island and Dardanelle Railway Company;

Rock Island, Stuttgart and Southern Railway Company;

Rock Island Memphis Terminal Railway Company;

Rock Island Omaha Terminal Railway Company.

CLASS 2. *Claims for personal injuries:*

Holders of claims for personal injuries to employes of the Debtors, respectively, and claims of personal representatives of deceased employes of the Debtors, respectively, arising under State or Federal laws.

CLASS 3. *Other prior claims:*

Holders of all other claims which are entitled to priority in payment by virtue of the laws of any State or of the United States.

CLASS 4. *General Mortgage 4% Gold Bonds:*

Claims evidenced by General Mortgage 4% Gold Bonds, due January 1, 1988, issued under and secured by the General Gold Bond Mortgage of The Chicago, Rock Island and Pacific Railway Company to Central Trust Company, of New York, and George Sherman, as Trustees, dated January 1, 1898, of which Bankers Trust Company, of New York, and B. W. Jones are now Trustees.

CLASS 5. *First and Refunding 4% Gold Bonds:*

Claims evidenced by First and Refunding 4% Gold Bonds, due April 1, 1934, issued under and secured by the First and Refunding Gold Bond Mortgage of The Chicago, Rock Island and Pacific Railway Company to Central Trust Company, of New York, and David R. Francis, as Trustees, dated April 1, 1904, of which Central Hanover Bank and Trust Company and George S. Hovey are now Trustees.

CLASS 6. *Equipment Gold Notes, Series I:*

Claims evidenced by Equipment Gold Notes, Series I, issued and outstanding under the Equipment Trust Agreement, dated January 15, 1920, between the Director General of Railroads, The Chicago, Rock Island and Pacific Railway Company and Guaranty Trust Company, of New York, as Trustee.

CLASS 7. *Equipment Trust Certificates, Series L:*

Claims evidenced by Equipment Trust Certificates, Series L, issued and outstanding under the Equipment Trust Agreement, dated June 1, 1923, between The New York Trust Company, as Trustee, and The Chicago, Rock Island and Pacific Railway Company.

CLASS 8. *Equipment Trust Certificates, Series M:*

Claims evidenced by Equipment Trust Certificates, Series M, issued and outstanding under the Equipment Trust Agreement, dated October 1, 1924, between The Coal and Iron National Bank of the City of New York, as Trustee, and The Chicago, Rock Island and Pacific Railway Company of which The Marine Midland Trust Company, of New York, is now Trustee.

CLASS 9. *Equipment Trust Certificates, Series N:*

Claims evidenced by Equipment Trust Certificates, Series N, issued and outstanding under the Equipment Trust Agreement, dated August 1, 1925, between The Equitable Trust Company of New York, as Trustee, and The Chicago, Rock Island and Pacific Railway Company, of which The Chase National Bank of the City of New York is now Trustee.

CLASS 10. *Equipment Trust Certificates, Series O:*

Claims evidenced by Equipment Trust Certificates, Series O, issued and outstanding under the Equipment Trust Agreement, dated

July 1, 1927, between Interstate Trust Company, as Trustee, and The Chicago, Rock Island and Pacific Railway Company, of which The Chase National Bank of the City of New York is now Trustee.

CLASS 11. *Equipment Trust Certificates, Series P:*

Claims evidenced by Equipment Trust Certificates, Series P, issued and outstanding under the Equipment Trust Agreement, dated August 1, 1929, between The National Park Bank of New York, as Trustee, and The Chicago, Rock Island and Pacific Railway Company, of which The Chase National Bank of the City of New York is now Trustee.

CLASS 12. *Equipment Trust Certificates, Series Q:*

Claims evidenced by Equipment Trust Certificates, Series Q, issued and outstanding under the Equipment Trust Agreement, dated June 1, 1930, between The Chase National Bank of the City of New York, as Trustee, and The Chicago, Rock Island and Pacific Railway Company.

CLASS 13. *Secured 4½% Gold Bonds, Series A:*

Claims evidenced by Secured 4½% Gold Bonds, Series A, due September 1, 1952, issued under and secured by the Indenture of The Chicago, Rock Island and Pacific Railway Company to The National City Bank of New York as Trustee, dated September 1, 1927.

CLASS 14. *Convertible 4½% Gold Bonds:*

Claims evidenced by Convertible 4½% Gold Bonds due May 1, 1960, issued under and secured by the Indenture of The Chicago, Rock Island and Pacific Railway Company to The Chase National Bank of the City of New York, as Trustee, dated May 1, 1930.

CLASS 15. *Burlington, Cedar Rapids and Northern Consolidated First Mortgage 5% Gold Bonds:*

Claims evidenced by Consolidated First Mortgage 5% Gold Bonds, due April 1, 1934, issued under and secured by the Consolidated First Mortgage of Burlington, Cedar Rapids and Northern Railway Company to Central Trust Company of New York, as Trustee, dated April 1, 1884, of which The New York Trust Company is now Trustee.

CLASS 16. *Choctaw and Memphis First Mortgage 5% Gold Bonds:*

Claims evidenced by First Mortgage 5% Gold Bonds, due January 1, 1949, issued under and secured by the First Mortgage of Choctaw and Memphis Railroad Company to The Girard Life Insurance, Annuity and Trust Company of Philadelphia (now Girard Trust Company), as Trustee, dated January 2, 1899.

CLASS 17. *Choctaw, Oklahoma and Gulf Consolidated First Mortgage 5% Gold Bonds:*

Claims evidenced by Consolidated First Mortgage 5% Gold Bonds, due May 1, 1952, issued under and secured by the Consolidated First Mortgage of Choctaw, Oklahoma and Gulf Railroad Company to Giarard Trust Company, of Philadelphia, as Trustee, dated May 1, 1902.

CLASS 18. *Rock Island, Arkansas and Louisiana First Mortgage 4½% Gold Bonds:*

Claims evidenced by First Mortgage 4½% Gold Bonds, due March 1, 1934, issued under and secured by the First Mortgage of Rock Island, Arkansas and Louisiana Railroad Company to Bankers Trust Company, of New York as Trustee, dated March 1, 1910, of which The Marine Midland Trust Company of New York is now Trustee.

CLASS 19. *St. Paul and Kansas City Short Line First Mortgage 4½% Gold Bonds:*

Claims evidenced by First Mortgage 4½% Gold Bonds, due February 1, 1941, issued under and secured by the First Mortgage of St. Paul and Kansas City Short Line Railroad Company to Bankers Trust Company, of New York, as Trustee, dated February 23, 1911.

CLASS 20. *Peoria Railway Terminal First Mortgage 4% Gold Bonds:*

Claims evidenced by First Mortgage 4% Gold Bonds, due January 1, 1937, issued under and secured by the First Mortgage of Peoria Railway Terminal Company to Illinois Trust and Savings Bank, of Chicago, as Trustee, dated January 2, 1907, of which Continental Illinois Bank and Trust Company is now Trustee.

CLASS 21. *Rock Island, Arkansas and Louisiana Railroad Company Little Rock and Hot Springs Western 4% Notes:*

Claims evidenced by 4% Notes, due July 1, 1939, of Rock Island, Arkansas and Louisiana Railroad Company to Little Rock and Hot Springs Western Railroad Company,. dated October 14, 1911.

CLASS 22. *Collateral loans:*

Claims evidenced by promissory notes of any of the Debtors herein, secured by the deposit and pledge of collateral security therefor.

CLASS 23. *The Chicago, Rock Island and Pacific Railway Company 7% Preferred Stock:*

Interests evidenced by certificates of 7% Preferred Stock of The Chicago, Rock Island and Pacific Railway Company.

CLASS 24. *The Chicago, Rock Island and Pacific Railway Company 6% Preferred Stock:*

Interests evidenced by certificates of 6% Preferred Stock of The Chicago, Rock Island and Pacific Railway Company.

CLASS 25. *The Chicago, Rock Island and Pacific Railway Company Common Stock:*

Interests evidenced by certificates of Common Stock of The Chicago, Rock Island and Pacific Railway Company.

CLASS 26. *Other Claims:*

Holders of claims, interests or securities of whatever character, other than those above enumerated in the foregoing classes, against the respective Debtors or their properties, whether or not the same be represented or evidenced by a written instrument.

The foregoing enumeration of classes does not indicate any rank, preference or priority of any class over any other class.

II. Claims and interests of or on behalf of creditors and stockholders described in the above-mentioned Classes 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25, inclusive, are excluded from the scope of this order, so far as the same relates to the time of filing or manner of proving such claims. Provision will be made by future order of the Court for such filing and proof.

III. All other claims and interests against the Debtors, respectively, or their several properties, as set forth in the foregoing classification, shall be evidenced by filing with W. H. Burns, General Auditor of the Trustees, 1106 La Salle Street Station, 139 West Van Buren Street, Chicago, Illinois, on or before the first day of May, 1934, a verified proof of claim, in duplicate, in such form as may be approved by the

Trustees herein, and as may be acceptable to the Court. Unless so filed or evidenced on or prior to said date, no such claim or interest may participate in any plan of reorganization, except on order of this Court for cause shown.

IV. All claims and interests of creditors or claimants, filed or evidenced as herein provided, will be referred for consideration and report to a special master hereafter to be appointed by said Court for that purpose. Objections to the allowance of any such claims and interests may be made and filed within the time and in the manner as shall be hereafter fixed by said Court, by any party in interest.

V. The Court reserves jurisdiction to make from time to time such further orders amplifying, extending, limiting or otherwise modifying this order as to the Court may at any time seem proper. Any creditor or stockholder of or claimant against any of the several debtors herein may apply to the Court at any time prior to April 1, 1934, upon notice to the parties to this proceeding, for a modification of the determination this day made of the division of creditors and stockholders into classes and of the time within which and the manner in which their respective claims and interests may be filed and evidenced.

VI. That the Trustees shall give notice to creditors and stockholders of, and claimants against, the several Debtors herein of the foregoing determination of the division of creditors and stockholders into classes, and of the foregoing determination of the time within which and the manner in which their respective claims and interest may be filed and evidenced, and of the time within which any creditor, stockholder, or claimant may apply to the Court for a modification

of this order, by publishing notice thereof once each week for two successive weeks in one daily newspaper, published and of general circulation in each of the Cities of Chicago, Illinois; Peoria, Illinois; St. Paul, Minnesota; Des Moines, Iowa; Omaha, Nebraska; Kansas City, Missouri; Oklahoma City, Oklahoma; Little Rock, Arkansas; Memphis, Tennessee; Fort Worth, Texas; and New York City, New York. When such publication has been completed, the Trustees shall file with the Clerk of this Court their report in that behalf, attaching thereto a copy of the said notice as published.

Enter:

WALTER C. LINDLEY,
Judge.

PETITION FOR ORDER NO. 42

Filed January 30, 1934

In the District Court of the United States for the Northern District of Illinois, Eastern Division

No. 53209

In the Matter of the Chicago, Rock Island and Pacific Railway Company, Debtor

Petition of Trustees Respecting Plan for Deferring Payment of Equipment Trust Maturities

And now come the Trustees and respectfully show to the Court:

1. As authorized by Order No. 35, entered herein December 28, 1933, they have prepared a plan for deferring for a period of not to exceed three years, the payment of all equipment trust notes or certificates of the principal Debtor, The Chicago, Rock Island and Pacific Railway Company, of each of the

said series of equipment trusts referred to in said Order No. 35, maturing in the twelve-months' period from December 1, 1933, to November 30, 1934, inclusive. Said plan is embodied in drafts of agreements with the holders of certificates of each of the respective series, which are in substantially identical form as to each of the several trusts, Series I, L, M, O, P, and Q. As to each of the said trusts, respectively, the plan contemplates that the certificate or note holder agrees not to take any action, or require or request the Trustee of the equipment trust agreement to take any action, by reason of the failure or refusal on the part of the Railway Company, or the Trustees, to pay that portion of the rental constituting the principal instalment or instalments of the said trust certificates maturing in the period above set forth, which agreement is made on the condition that the Trustees will pay currently all warrants for dividends or coupons for interest on all outstanding notes or certificates of such series as the same become due and payable; will pay at the maturity thereof the principal amount of all notes or certificates, except those maturing in the said twelve-months' period; and on or before three years after the maturity thereof, or, at the option of the Trustees, at any time prior thereto, will pay the principal instalments maturing in the said twelve-months' period, and will currently pay semiannual interest at the rate borne by the respective certificates on the principal instalments the payment of which is deferred. A copy of the said proposed agreement, as it relates to equipment trust Series L, is attached as Exhibit A to this petition. The agreements as to the other series are in substantially identical form.

2. Equipment trust agreements, series N and Series O, provide in Article Seventh thereof as follows:

> *Seventh.* In case the Railway Company shall at any time make default in the payment of any part of the rental in the Lease reserved for thirty (30) days after the same shall become payable, or shall, for thirty (30) days after the Trustee shall have demanded in writing performance thereof, fail to keep and perform any of the terms and covenants of this Agreement or of the Lease, as herein and therein provided, the Trustee may, in its discretion, and shall at the written request of the holders of at least a majority in amount of said Trust Certificates then outstanding, declare the principal of all of said Trust Certificates to be due and payable immediately, and the same shall thereupon become and be immediately due and payable, and thereupon the Trustee shall have the right to enforce all the terms and stipulations of said Lease, and in case the Trustee shall retake possession of said railway equipment, as therein provided, it may either hold or lease or dispose of said railway equipment, or so much thereof as it may deem necessary, in such manner, at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial; and the proceeds of such lease or sale shall be applied by the Trustee, after deducting the reasonable and necessary expenses and proper compensation of the Trustee for its services under this Agreement and the Lease, and any and all taxes (other than federal income taxes), which the Trustee or the Railway Company may be required to pay or deduct or retain, in respect of the leased property and the rental thereof, or the Trust Certificates aforesaid, or the dividends thereon, as above provided, to the payment of:

First: the dividend warrants then due, with interest thereon at the rate of four and one-half percent (4½%) per annum from their respective due dates; and

Second: the principal of all of the outstanding Trust Certificates, with interest at the rate of four and one-half percent (4½%) per annum, from the last preceding dividend date, whether or not said Trust Certificates, or any of them, shall then have matured by their terms, in full, if said proceeds shall be sufficient, and if not, then pro rata, without regard to the date of maturity thereof;

Third: any surplus then remaining to the Railway Company, its successors or assigns, or to whosoever may be lawfully entitled to receive the same.

Such retaking possession of said equipment by the Trustee shall not be a bar to or prevent the recovery by the Trustee from the Railway Company of future accruing rentals until such sum is realized as, with the proceeds of the sale of said equipment, shall be sufficient for the payment in full of all taxes and expenses as aforesaid, together with all accrued dividend warrants and the principal of all said Trust Certificates then outstanding, with interest thereon from the last preceding dividend date, as aforesaid.

Article Ninth of the said equipment trust agreements is as follows:

Ninth. The Trustee shall be under no obligation to take any action for the execution or enforcement of any of the trusts hereby created unless requested thereunto in writing by the holders of not less than a majority in amount of the then outstanding Trust Certificates issued hereunder and upon being indemnified

to its satisfaction against expense and liability with respect thereto, and also furnished with proof satisfactory to it as to the ownership of the Trust Certificates and dividend warrants in respect of which any notice or request may be made, but neither any such request nor this provision therefor shall affect any discretion herein elsewhere specifically given to the Trustee to determine whether or not it shall take action in respect of any such default, or to take action without request.

Article Tenth thereof provides in part as follows:

Tenth. No holder of any Trust Certificate or dividend warrant issued hereunder shall have any right to institute any suit, action, or proceeding for the execution and enforcement of the trusts hereby created unless, after the aforesaid request in writing by the holders of not less than a majority in amount of the then outstanding Trust Certificates shall have been made to the Trustee, indemnity satisfactory to it provided, and a reasonable time has elapsed for action by the Trustee upon such request, it shall decline or neglect to institute any proceedings pursuant thereto.

The Trustee at its option may, for all purposes, conclusively assume that the Railway Company is not in default under the terms hereof or of the Lease until notified in writing to the contrary by the holders of at least one-quarter in amount of the Trust Certificates secured hereby and then outstanding, which notice shall distinctly specify the default desired to be brought to the attention of the Trustee.

Equipment trust agreement Series L contains substantially identical provisions with respect to the rights of the holders thereof.

Equipment trust agreement Series Q contains provisions substantially identical with those of Article

Seven and Article Nine of equipment trusts Series L, N, and O.

Article Tenth of equipment trust agreement Series Q is as follows:

> *Tenth.* The Trustee shall be under no obligation to take any action for the execution or enforcement of any of the trusts hereby created unless requested thereunto in writing by the holders of not less than twenty-five percent in amount of the then outstanding Trust Certificates issued hereunder and upon being indemnified to its satisfaction against expense and liability with respect thereto, and also furnished with proof satisfactory to it as to the ownership of the Trust Certificates and dividend warrants in respect of which any notice or request may be made; but neither any such request nor this provision therefor shall affect any discretion herein elsewhere specifically given to the Trustee to determine what action it shall take in respect of any such default, or to take action without request.

3. As directed by said Order No. 35, the Trustees have negotiated with the Trustee of each of the said equipment trust agreements and with the holders of notes or certificates issued thereunder. As of the date hereof, the holders of more than 75% in amount of the certificates of each of the Series L, N, and O, respectively, and the holders of more than 55% in amount of the certificates of Series Q, have assented to the said plan, and have executed and delivered to the Trustees agreements in the form submitted herewith as Exhibit A to this Petition.

The Trustees are continuing their negotiations with the holders of certificates of other series.

4. Under the terms of the several leases, which constitute parts of the said equipment trust agreements, respectively, the following instalments of rental,

equal to semiannual dividends on the outstanding certificates, are due and payable to the Trustees of the said equipment trust agreements, at the dates indicated:

December 1, 1933:	
Semiannual dividends, Series L	$71, 250. 00
Semiannual dividends, Series Q	252, 720. 00
January 1, 1934:	
Semiannual dividends, Series O	132, 637. 50
February 1, 1934:	
Semiannual dividends, Series N	56, 700. 00
Total	$513, 307. 50

If the plan is declared operative, semiannual dividends due on the dates indicated above will be immediately due and payable to the holders of certificates of each series who have assented to the plan; together with interest from said dates, respectively, to the date of payment at the rate borne by the respective series of certificates.

The Trustees are of the opinion that, in view of the assent to the plan as set forth above by the holders of the outstanding equipment trust certificates of Series L, N, O, and Q, the respective Trustees of the equipment trust agreements will not take any action to declare due the principal of the outstanding certificates of any of the said series, and will not endeavor to prevent the continued use of the equipment by the trust estate. The Trustees, therefore, recommend to the Court that they be authorized to declare the plan operative as to the equipment trust certificates, Series L, N, O, and Q; to inform the holders of said certificates thereof; to pay to the Trustees of the said equipment trust agreements, respectively, or to the holders of certificates issued thereunder, as contemplated in the plan, the amount of rentals set forth in Paragraph 4 of this petition; and to comply with the other conditions set forth in the

respective agreements constituting said plan, for observance by the Trustees.

Respectfully submitted.

FRANK O. LOWDEN,
JAMES E. GORMAN,
JOSEPH B. FLEMING,
Trustees.

MARCUS L. BELL,
W. F. DICKINSON,
W. F. PETER,
Solicitors for Trustees.

(Verification omitted in printing.)

FORM OF AGREEMENT REFERRED TO IN FOREGOING PETITION

The Chicago, Rock Island and Pacific Railway Company

Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees

Equipment Trust, Series L Agreement

January 1, 1934

THIS AGREEMENT, dated as of January 1, 1934, between FRANK O. LOWDEN, JAMES E. GORMAN and JOSEPH B. FLEMING, as Trustees (hereinafter called the "Trustees"), party of the first part, and such holders of Equipment Trust Certificates of THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY issued under the Equipment Trust Agreement hereinafter described as shall join in the execution of this Agreement, or a counterpart thereof, parties of the second part:

WITNESSETH:

WHEREAS on June 1, 1923, an agreement creating an equipment trust (hereinafter called the "Equip-

ment Trust Agreement"), designated "The Chicago, Rock Island and Pacific Railway Equipment Trust (Issue of 1923), Series L", was entered into between The New York Trust Company, as Trustee, and the Chicago, Rock Island and Pacific Railway Company, a corporation of Illinois and Iowa (hereinafter called the "Railway Company"); and pursuant thereto the Trustee of said Equipment Trust Agreement made and executed to and with the Railway Company a lease agreement, dated June 1, 1923 (hereinafter called the "Lease"); and in accordance with the terms of the Lease and the Equipment Trust Agreement, the Trustee thereof delivered to the Railway Company the equipment described therein; and

WHEREAS, pursuant to the Equipment Trust Agreement the Trustee issued its Certificates of shares in such equipment trust (hereinafter called the "Certificates"), in the aggregate principal amount of $8,550,000, bearing date June 1, 1923, maturing serially in equal semiannual instalments of $285,000, payable on the first day of June and the first day of December in each year until June 1, 1938, and providing for the payment of dividends on said Certificates at the rate of 5% per annum, semiannually on June 1 and December 1 in each year; the principal amount of said Certificates and dividends being payable only from and out of rentals or other moneys received for such purpose by the Trustee pursuant to the Lease and the Equipment Trust Agreement; and

WHEREAS, the Railway Company, by endorsement on each of the Certificates, guaranteed the prompt payment of the principal thereof and of the dividends thereon; and

WHEREAS all the Certificates maturing prior to December 1, 1933, aggregating $5,700,000, have been

paid off and discharged, so that there now remain outstanding $2,850,000 thereof; and

WHEREAS the Trustees were appointed by order of the District Court of the United States for the Northern District of Illinois, Eastern Division, in proceedings for the reorganization of a railroad therein pending, under Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, entitled "In the Matter of The Chicago, Rock Island and Pacific Railway Company, Debtor," No. 53209, and have duly qualified as such and entered into the possession of the property of the Railway Company, including all the equipment referred to in the said Equipment Trust Agreement and Lease, and now are acting as such Trustees; and

WHEREAS, on December 28, 1933, said Court made and entered an order in said proceeding relating to said Certificates, in the following language:

"ORDERED,

1. That until the further order of this Court, the Trustees herein make no further payment on account of rentals, principal, interest or dividends due, or to become due, under any of the following Equipment Trust Agreements of the Debtor, The Chicago, Rock Island and Pacific Railway Company:

(1) Equipment Trust Agreement of January 15, 1920, Series I, with the Guaranty Trust Company of New York, as Trustee, under which there are now outstanding $1,080,000 of 6% Equipment Gold Notes.

(2) Equipment Trust Agreement and Lease of June 1, 1923, Series L, with The New York Trust Company, as Trustee, under which there are now outstanding $2,850,000 of 5% Equipment Trust Certificates.

(3) Equipment Trust Agreement and Lease of October 1, 1924, Series M, with The Marine Midland Trust Company of New York, as Trustee, under which there are now outstanding $376,000 of 5% Equipment Trust Certificates.

(4) Equipment Trust Agreement and Lease of August 1, 1925, Series N, with The Chase National Bank of the City of New York, as Trustee, under which there are now outstanding $2,520,000 of 4% Equipment Trust Certificates.

(5) Equipment Trust Agreement and Lease of July 1, 1927, Series O, with The Chase National Bank of the City of New York, as Trustee, under which there are now outstanding $5,895,000 of 4½% Equipment Trust Certificates.

(6) Equipment Trust Agreement and Lease of August 1, 1929, Series P, with The Chase National Bank of the City of New York, as Trustee, under which there are now outstanding $6,930,000 of 4½% Equipment Trust Certificates.

(7) Equipment Trust Agreement and Lease of June 1, 1930, Series Q, with The Chase National Bank of the City of New York, as Trustee, under which there are now outstanding $11,232,000 of 4½% Equipment Trust Certificates.

2. That the Trustees be, and they hereby are, authorized and directed to negotiate with the Trustees of the said Equipment Trust Agreements and with the holders of the notes and certificates issued thereunder, for the formulation of a plan for the refinancing or deferring the payment of all notes or certificates of each of the said Series of Equipment Trusts maturing in the twelve months period from December 1, 1933, to November 30, 1934,

inclusive, upon such terms as will preserve the use of the equipment for use in the operation of the Trust Estate,"

and

WHEREAS the Trustees have proposed that the holders of the Certificates of Series L forbear for a period of three years, under the terms and conditions hereinafter set forth, to take action, or request the Trustee of the Equipment Trust Agreement to take action, by reason of the failure or refusal on the part of the Railway Company, or the Trustees, to pay on the maturity thereof the instalments of principal falling due under Equipment Trust Agreement, Series L, on December 1, 1933, aggregating $285,000, and on June 1, 1934, aggregating $285,000, and said proposal has been approved by the holders of the Certificates, parties hereto.

NOW, THEREFORE,

In consideration of the premises and of the mutual agreements herein contained, the parties hereto agree, and each holder of Certificates party hereto agrees with each other holder of Certificates party hereto, as follows:

1. This Agreement shall not be declared operative until approved by the United States District Court for the Northern District of Illinois, Eastern Division, in said proceeding, and until the holders of all the Certificates (or, if less than all, such amount as the Trustees may in their discretion determine) shall have become parties to this Agreement.

As soon as this Agreement has been declared operative by the Trustees, the Trustees shall promptly give notice to that effect to the holders of the Certificates parties hereto and each of the holders of the Certifi-

cates party hereto agrees that promptly upon receipt of said notice he or it will present his or its Certificate or Certificates at the office of the Assistant Treasurer for the Trustees in the City of New York, for endorsement thereon of a legend substantially in the following form:

> "The within Equipment Trust Certificate and all rights of the holder thereof are subject to an agreement dated as of January 1, 1934, between the holders of Equipment Trust Certificates of this issue, of which this certificate is one, and Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees, copies of which agreement are on file with The New York Trust Company, Trustee, New York City, New York, and with said Trustees."

As soon as each Certificate is so endorsed, the Trustees shall cause the same to be returned to the certificate holder who presented the same for endorsement, and at the time of such return the Trustees will cause to be paid to said certificate holder, upon the surrender thereof at the office of The New York Trust Company, Trustee of said Equipment Trust Agreement, in the Borough of Manhattan, in the City and State of New York, any warrant for dividends then due and unpaid, together with interest on such overdue warrant at the rate of 5% per annum to the date this Agreement becomes operative.

At any time before this Agreement becomes operative in the manner herein provided, the Trustees may, by notice delivered to the certificate holders, revoke any offers thay may have made to enter into this Agreement.

2. Each certificate holder agrees that after this Agreement becomes operative he or it will not take any action or require or request the Trustee of said

Equipment Trust Agreement to take any action, and that he or it will not do any act which would cause said Trustee to take any action, by reason of the failure or refusal or default on the part of the Railway Company, or the Trustees (irrespective of whether such failure or refusal or default shall continue for a period of thirty days or more) to pay the $285,000 of rentals or principal due December 1, 1933, or the $285,000 of rentals or principal due June 1, 1934, under Paragraph 4 of Article First of the Lease; provided, however, that such Agreement is made solely upon the following conditions and shall remain in force and effect only so long as such conditions shall be strictly observed, viz:

(*a*) There shall be paid currently as the same become due all warrants for dividends maturing December 1, 1933, and subsequently on all Certificates of Series L.

(*b*) There shall be paid the principal amount of all Certificates outstanding under the Equipment Trust Agreement, and all dividend warrants appertaining thereto, as the same shall respectively become payable, except as herein modified in respect of the principal amount of Certificates payable December 1, 1933, and June 1, 1934.

(*c*) On December 1, 1936, or, at the option of the Trustees, on any date prior thereto, there shall be paid to the Trustee of the Equipment Trust Agreement the sum of $285,000 in cash in payment of the rentals due December 1, 1933, under paragraph 4 of Article First of the Lease, for application by the Trustee to the payment of the principal amount of said Certificates payable on December 1, 1933, and on June 1, 1937, or, at the option of the Trustees, on any date prior thereto and subsequent to June 1, 1934, there shall be paid to the said Trustee the sum of $285,000 in cash in payment

of said rentals due June 1, 1934, for application by the Trustee to the payment of the principal amount of the Certificates payable on June 1, 1934. If such payments shall be made, at the option of the Trustees, on a date other than a dividend payment date, the Trustees will also pay to the Trustee of the Equipment Trust Agreement an amount equal to the amount of accrued dividends on all of the Certificates so paid, from the last preceding dividend payment date to such date of payment.

(*d*) Semiannually on June 1 and December 1 of each year, beginning June 1, 1934, on the Certificates due December 1, 1933, and beginning December 1, 1934, on the Certificates due June 1, 1934, and continuing until the respective dates of payment provided in paragraph (*c*) of this Article 2, there shall be paid dividends at the rate of 5% per annum, upon presentation of said Certificates at the office of the Trustees, in the Borough of Manhattan, City of New York, for endorsement of such payment thereon.

(*e*) The Trustees will also carry out and perform all the other covenants and obligations of the Equipment Trust Agreement and Lease.

The conditions expressed in the foregoing subparagraphs (*a*), (*b*), (*c*), (*d*), and (*e*) shall be regarded as conditions only, and nothing herein contained shall be construed as making said subparagraphs agreements binding upon the Trustees which the Trustees are obliged to perform.

3. It is not intended by this Agreement to modify or alter the rights of the holders of Certificates under the terms of the Equipment Trust Agreement or of their Certificates, except to the extent herein expressly provided; and without limitation of the foregoing, it is understood that, except as herein expressly provided, this Agreement shall not have the effect of subjecting

the principal amount of Certificates maturing December 1, 1933, or June 1, 1934, or such part thereof as is held by the holders of such Certificates becoming parties to this Agreement, or the warrants for dividends thereon, to the prior payment in full of the principal of any of the other Certificates (whether the same mature before or after June 1, 1937), or warrants for dividends thereon.

4. This Agreement shall not become effective unless and until the Trustees shall on or before March 1, 1934, declare the same operative by addressing to each party hereto notice in writing to that effect; provided that the Trustees by similar notice may from time to time extend such date on or before which this Agreement may be declared operative, but in no event to a date later than June 1, 1934.

5. The Trustees shall declare this Agreement operative only when in their discretion they have determined that the holders of sufficient Certificates have become parties hereto.

6. The holders of Certificates request the Trustees to deliver a copy of this Agreement to the Trustee of the Equipment Trust Agreement.

7. This Agreement may be executed in any number of counterparts, all of which shall be construed together as only one instrument; and any holder of a Certificate or Certificates may become a party hereto by executing any counterpart hereof and delivering the same to the Trustees.

In Witness Whereof, the parties hereto have executed this Agreement in one or more counterparts as of the date and year first above written.

FRANK O. LOWDEN,
JAMES E. GORMAN, and
JOSEPH B. FLEMING,

Trustees of The Chicago, Rock Island and Pacific Railway Company.

By _____,
Assistant Treasurer.

Principal Amount of Certificates... $_____
Serial Numbers of Certificates: _____
_____
Signature of Owner _____
Address _____

ORDER NO. 42

Entered January 30, 1934

In the District Court of the United States for the Northern District of Illinois, Eastern Division

No. 53209

In the Matter of The Chicago, Rock Island and Pacific Railway Company, Debtor

Order Approving Plan for Deferring Payment of Equipment Trust Maturities

On this day coming on to be heard the petition of the Trustees respecting the plan proposed by the Trustees pursuant to Order No. 35, entered herein December 28, 1933, for deferring the payment of certain equipment trust maturities of the principal debtor, The Chicago, Rock Island and Pacific Railway Company, and due notice of the presentation of said petition having been served upon all parties to these proceedings, and the Trustees appearing by Marcus L. Bell, W. F. Dickinson, and W. F. Peter, their Solicitors, and it appearing to the Court that the holders of more than 76.1% in amount of all the outstanding equipment trust certificates of Series L have executed the agreement

embodying said plan, in the form now submitted to the Court as Exhibit A to the petition of the Trustees; that more than 81.9% in amount of the holders of all the outstanding equipment trust certificates of Series N have executed a similar agreement with respect to Series N trust; that more than 80.3% in amount of the holders of all the outstanding equipment trust certificates of Series O have executed a similar agreement with respect to Series O trust; and that more than 60.5% in amount of the holders of all the outstanding equipment trust certificates of Series Q have executed such agreement with respect to Series Q trust; and the Court having heard the statements of counsel, and being fully advised in the premises, it is

Ordered:

The Court hereby approves the Plan for deferring the payment of equipment trust maturities prepared by the Trustees pursuant to Order No. 35, entered herein December 28, 1933, as embodied in the proposed agreements of January 1, 1934, between the Trustees and the holders of each series of equipment trust certificates of the principal Debtor, The Chicago, Rock Island and Pacific Railway Company; and the Trustees hereby are authorized in their discretion to declare the said Plan operative as to Equipment Trust Series L, Equipment Trust Series N, Equipment Trust Series O, and Equipment Trust Series Q, respectively; and the Trustees are further authorized, on behalf of the trust estate, to make all of the payments and to carry out and perform all the other conditions provided in said Plan with respect to each of said equipment trusts

Series L, Series N, Series O, and Series Q, respectively, to be observed, kept, and performed by the Trustees.

The Trustees are further authorized to declare the said Plan operative as to equipment trust agreements Series I, Series M, and Series P, or any of them, when in their discretion they shall have determined that the holders of a sufficient amount of notes or certificates, as the case may be, of such series, respectively, have become parties thereto.

Enter:

PATRICK T. STONE, *Judge.*

D. C. Form No. 30

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Charles M. Bates, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Petition filed January 30, 1934; Order entered January 30, A. D. 1934, In re: The Chicago, Rock Island and Pacific Railway Company, Debtor No. 53209, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, this 7th day of January, A. D. 1935.

[SEAL] CHARLES M. BATES, *Clerk.*

PETITION FOR ORDER NO. 42-A

Filed November 30, 1934

In the District Court of the United States for the Northern District of Illinois, Eastern Division

No. 53209

In the Matter of the Chicago, Rock Island and Pacific Railway Company, Debtor

Petition of Trustees Respecting Equipment Trust Maturities of Series L and Q, December 1, 1934

And now come the Trustees herein and respectfully show to the Court:

1. Pursuant to Order No. 42, entered herein January 30, 1934, approving the Plan for deferring the payment of equipment trust maturities of the principal debtor, The Chicago, Rock Island and Pacific Railway Company, prepared by the Trustees in compliance with Order No. 35, entered December 28, 1933, they have declared the said Plan operative as to all of the series of equipment trusts described in the Petition of the Trustees respecting the extension of equipment trust maturities, known as Petition No. 35, filed December 28, 1933: more than 91 percent in amount of the holders of all the outstanding certificates having consented thereto. Under the said Plan the assenting certificate holders have agreed to forbear taking any action by reason of the nonpayment of the principal instalments due in the twelve-months' period December 1, 1933, to November 30, 1934, provided the Trustees pay currently all amounts payable by way of interest and on December 1, 1934, resume the payment of princi-

pal obligations as they mature, and provided also that principal maturities falling due in the twelve-months' period from December 1, 1933, to November 30, 1934, inclusive, be paid not more than three years after the date of their respective maturities, and, in the meantime, continue to bear interest at the rate borne prior to maturity.

The Trustees, as authorized by the said Order No. 42, have paid, as the same became due, all amounts payable by way of interest on all the outstanding equipment trust certificates; but have not paid the principal of any of the said certificates.

2. There are now outstanding the following equipment trust certificates of The Chicago, Rock Island and Pacific Railway Company:

Series and Date of Trust	Trustee	Amount of Certificates Originally issued	Rate	Amount Now outstanding	Maturity
			Per cent		
Series I, January 15, 1920.	Guaranty Trust Company of New York.	$8,117,250	6	$1,080,000	$540,000 annually January 15.
Series L, June 1, 1923.	The New York Trust Company.	8,550,000	5	2,850,000	$285,000 semiannually June 1; December 1.
Series M, October 1, 1924.	Marine Midland Trust Company of New York.	3,760,000	5	376,000	$188,000 semiannually April 1; October 1.
Series N, August 1, 1925.	The Chase National Bank of the City of New York.	5,400,000	4½	2,520,000	$360,000 annually August 1.
Series O, July 1, 1927.	The Chase National Bank of the City of New York.	8,515,000	4½	5,995,000	$655,000 annually July 1.
Series P, August 1, 1929.	The Chase National Bank of the City of New York.	9,450,000	4½	6,930,000	$630,000 annually August 1.
Series Q, June 1, 1930.	The Chase National Bank of the City of New York.	14,040,000	4½	11,232,000	$468,000 semiannually June 1; December 1.

3. Principal instalments of equipment trust certificates maturing in the twelve months' period December 1, 1934, to November 30, 1935, are as follows:

Date	Series	Principal
December 1, 1934	L	$285,000
December 1, 1934	Q	468,000
January 1, 1935	O	
January 15, 1935	I	540,000
February 1, 1935	N	
February 1, 1935	P	
June 1, 1935	L	285,000
June 1, 1935	Q	468,000
July 1, 1935	O	655,000
July 15, 1935	I	
August 1, 1935	N	360,000
August 1, 1935	P	630,000
Total		$3,691,000

4. The Trustees will submit to the Court with this petition a detailed cash forecast for the trust estate to the end of the year 1934, which shows that at December 31, 1934, the Trustees will have in their hands the sum of approximately $2,736,000 in cash. This makes no allowance for the payment on December 1 of the $753,000 equipment trust maturities, Series L and Q, referred to above, or the payment during the six months' default period of the interest due July 1, 1934, on the General Mortgage 4% Gold Bonds of the debtor, The Chicago, Rock Island and Pacific Railway Company, said interest amounting to $2,039,000. It is estimated that the unpaid vouchers at December 31, 1934, will be approximately $3,200,000. The Trustees will also submit a cash forecast for the year 1935, based on the most careful estimates which the Trustees have been able to make at this time.

5. Ad valorem taxes due to the various states on the property of the trust estate have not been paid during the current year as promptly as the Trustees

regard it as desirable, but the Trustees hope to be able to bring the taxes to a practically current situation by the end of the year; and regard it as important that this status be continued.

6. The Trustees must be prepared to meet during the year 1935 several items of substantially increased expenditure, as compared with 1934. The principal of these items is the increased cost of wages resulting from the restoration by all the railroads of the 10% pay cut put into effect in 1932. This restoration will amount in 1935 to about $2,800,000 more in wages than for 1934. The increased cost of fuel and other materials and supplies will be about $2,500,000, based on the estimates of the same amount of consumption.

In addition the Railroad Retirement Act will require the accrual of about $1,530,000 during the year as the trust estate's contribution to the Railroad Retirement Fund: which, with the accrual made in 1934 for the same purpose, will require approximately $2,100,000 in cash during 1935. The validity of the Act is now being tested in the Courts in proceedings brought by substantially all the carriers, to which proceedings your petitioners are parties. If the Act is sustained by the Supreme Court of the United States, the trust estate herein will be called upon to pay during the year 1935 an amount estimated as stated above, at $2,100,000; and pending the determination of the validity of the Act your petitioners do not feel that they can safely fail to make accruals in their operating expenses for the payment of said sum.

During the last few years, maintenance expenditures on the property have necessarily been reduced to a minimum, and will now have to be increased. The Trustees recently have been furnished with a copy of a report by Messrs. Coverdale & Colpitts, Consult-

ing Engineers of New York City, made at the instance of the Protective Committee for the General Mortgage 4% Gold Bonds of the Pacific Company, relating to maintenance conditions on the property. The report of Messrs. Coverdale & Colpitts indicates that there is now an accumulation of deferred maintenance of way and structures and of equipment exceeding $10,000,000; and states that while the restoration of much of this can be postponed pending improvement in traffic, the property now urgently needs the expenditure for this purpose of $1,500,000 to $2,000,000 per year during the next two years in excess of the expenditures for 1934. The report further suggests that, if traffic increases, it will be necessary to increase these expenditures correspondingly. While the Trustees are informed that the Protective Committee for the General Mortgage Bonds has not yet taken any action with regard to this report, the Trustees believe that the conclusion stated in the report is a conservative statement of the situation as it now exists, and reflects the actual situation with respect to this property.

Although it is impossible at this time accurately to forecast the revenues of the trust estate for 1935, it is probable, as shown by the estimates submitted herewith, that, unless there is a substantial improvement in traffic, the Trustees will require in the operation of the property the use of all the cash now available, including the amount of $753,000 which would be required if the December 1, 1934, principal maturities of equipment trust certificates were paid in cash. The forecast for 1935 does not indicate that petitioners will have sufficient funds to continue the payment of interest upon the General Mortgage 4% Gold Bonds of the Pacific Company.

PETITIONERS, therefore, recommend that, until the further order of the Court, without prejudice to the rights of any party to this proceeding, or the trustee of any equipment trust agreement, or the holders of equipment trust notes or certificates, the Trustees be directed to make no payment on account of principal of any equipment trust note or equipment trust certificate of the debtor, The Chicago, Rock Island and Pacific Railway Company; but be authorized, until the further order of the Court, to continue the payment of interest or dividends on all of the outstanding equipment trust notes and certificates, whether matured or unmatured.

Respectfully submitted.

FRANK O. LOWDEN,
JAMES E. GORMAN,
JOSEPH B. FLEMING,
Trustees.

(Verification omitted in printing.)

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Charles M. Bates, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Petition of Trustees Respecting equipment Trust Maturities of Series L and Q, December 1, 1934, filed November 30, 1934, In re The Chicago, Rock Island and Pacific Railway Company, Debtor No. 53209, now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago this 7th day of January, A. D. 1935.

[SEAL] CHARLES M. BATES, *Clerk.*

LETTER FROM TRUSTEES TO MR. OLIVER E. SWEET, DIRECTOR OF FINANCE, INTERSTATE COMMERCE COMMISSION, FINANCE DOCKET 10028

Interstate Commerce Commission, Washington

I, GEORGE B. McGINTY, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached is true copy of letter dated Chicago, December 19, 1934, addressed to Mr. Oliver E. Sweet, Director, Bureau of Finance, Interstate Commerce Commission, Washington, D. C., signed Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees, and of enclosure referred to therein, the originals of which are now on file and of record in the office of this Commission.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of said Commission this 3d day of January, A. D. 1935.

[SEAL] GEORGE B. McGINTY,
Secretary of the Interstate Commerce Commission.

THE CHICAGO, ROCK ISLAND
& PACIFIC RAILWAY CO.,
LA SALLE STREET STATION,
Chicago, December 19, 1934.

IN RE: C. R. I. & P. Ry. Co. U. S. District Court, Northern District of Illinois. #53209. Finance Docket No. 10028.

MR. OLIVER E. SWEET,
Director, Bureau of Finance, Interstate Commerce Commission, Washington, D. C.

DEAR SIR: The Trustees have considered your letter of December 3, 1934, making inquiry as to what progress has been made in the preparation of a plan of reorganization.

We believe it is our duty, in replying thereto, to advise you somewhat in detail as to the situation.

We were appointed on November 22, 1933, and believing that the purpose of the statute under which we were appointed was to bring about prompt reorganizations we at once began an investigation of the assets and liabilities of the several trust estates and their general situation, in the hope that a prompt reorganization could be accomplished. With that end in view, we have considered the many complex problems which have arisen in this proceeding and have had various studies and surveys made in order to arrive at the facts necessary to have in order to formulate a reorganization plan.

Numerous groups of creditors have intervened in this proceeding and these interventions have disclosed a wide variety of differing interests and views. We have felt that every reasonable effort should be made to harmonize these differences and thereby to promote the prospects for favorable action by the several classes of creditors, claimants, and stockholders before a plan is submitted for their action. We have had many conferences with the representatives and counsel of the various committees relative to the conduct of the trust estates in order to obtain the benefit of their suggestions and advice concerning the problems of reorganization and the other problems of the estates.

We are confronted with a major problem concerning the formulation of a plan of reorganization, that being the greatly depressed revenues of the trust estates. In our judgment these revenues at the present time are much too inadequate to support any kind of capital structure that the several classes of creditors would accept or that would be approved as equitable by the

Commission and the Court. It is hoped that in due time the revenues will substantially improve and reach a level of comparative stability and we believe it is necessary that the approximate whereabouts of that level be known before any plan of reorganization can be fairly, equitably, and intelligently formulated for presentation.

We have been very much concerned by the fact that the situation has been such that we have up to this time not been able to formulate and propose a plan of reorganization. Upon different occasions we have discussed this problem with the representatives of various substantial interests in the estates to ascertain their views as to whether or not it would be feasible to now formulate a reorganization plan.

On October 11, 1934, a meeting was held at 25 Broad Street, New York, attended by the following persons:

Messrs. Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees.

Messrs. Leon O. Fisher, V. P., Equitable Life Assurance Society; Edward W. Bourne, of Alexander & Green, Counsel, representing Committee for General Bondholders.

Messrs. Robert C. Hardy, Secretary; Edward C. Bailly, of Hornblower, Miller, Miller & Boston, Counsel, representing Committee for B. C. R. & N. Bondholders.

Messrs. George N. Lindsay, Wm. Lloyd Kitchel, of Cadwalader, Wickersham & Taft, Counsel, representing Committee for Convertible-Bond holders.

Messrs. Dwight S. Beebe, V. P., Mutual Life Ins. Company of New York, Elihu Root, Wilkie Bushby, of Root, Clark, Buckner & Ballantine, Counsel, representing Committee for Refunding and secured 4½% Bondholders.

Messrs. H. G. Moulton, Morton Bogue, of Beekman, Bogue & Clark, Counsel, representing Committee for R. I. A. & L. Bondholders.

Messrs. John C. Traphagen, Chairman, Bank of New York and Trust Co., E. L. Williams, of Cotton, Franklin, Wright & Gordon, Counsel, representing Committee for C. O. & G. and Choctaw and Memphis Bondholders.

Messrs. Archer W. Bachman, J. Donald Duncan, of Auchincloss & Duncan, Counsel, representing Committee for Short Line Bondholders.

Messrs. Charles Hayden, Ralph Bollard, representing Reorganization Managers.

Messrs. C. M. Clay, Hilton Moore, representing Reconstruction Finance Corporation.

Mr. Otis F. Glenn, Counsel for Trustees.

Messrs. Marcus L. Bell, General Counsel, Carl Nyquist, Secretary, and Treasurer.

and at that time the Chairman of the Trustees called attention to the decision of the Circuit Court of Appeals in its opinion confirming Judge Wilkerson's injunction order against the sale of collateral in which the court held that Section 77 did not contemplate "nursing receiverships", and stated that the Trustees would like to have the views of those present as to whether it was possible or desirable at that time to formulate a reorganization plan.

He stated that under Section 77 the primary duty of presenting a plan rested upon the Railway Company, and called first upon Mr. Charles Hayden, Chairman of the Board of the Railway Company and also Chairman of its Reorganization Managers. Mr. Hayden stated that at the time of the appointment of Reorganization Managers it appeared that a plan of reorganization could be prepared and submitted

with reasonable promptness; that since that time the decline in earnings and the general decline in the price of all securities made it impossible to proceed with reorganization, or the preparation or submission of any plan that would be acceptable to the various classes of security holders. He further said that he would be available at any time the representatives of the various Committees were prepared to work out a plan upon a reasonable basis, and would be glad to cooperate, but that, until earnings should assume a stable basis he did not think it feasible.

Mr. Bollard, of the Reorganization Managers, concurred in the views of Mr. Hayden.

Mr. Beebe, of the First and Refunding Committee, stated that, in his view, any reorganization should be permanent and not temporary; that any reorganization attempted at this time would result in too great a sacrifice by the holders of bonds, and that it was not fair to them to ask them to do it. The Chairman of the Trustees thereupon said that in view of the fact that it seemed impossible for a prompt reorganization to be brought about, perhaps the spirit of Section 77 could not be carried out and perhaps it was the duty of the Trustees to so report to the Court and resign. No one present indicated that they thought such action should be taken and a number present stated that they thought such action would be very detrimental to the welfare of those interested in the Trust Estates.

The Chairman thereupon asked the meeting what they considered to be the duty of the Trustees in the premises. Mr. Root replied that if a plan were presented at the present time it would undoubtedly fail to receive the necessary approval of the various classes of creditors and the Court would thereupon

have immediately before it a motion to dismiss these proceedings, and if the proceedings were dismissed it would be followed by an Equity Receivership. The Chairman asked if that would help matters and Mr. Root said no, that the situation would be much worse, and with this proposition there seemed to be general assent.

Mr. Bailly said that he regarded it as impossible to make a permanent reorganization under the present conditions; in this view Mr. Kitchel agreed, as did Mr. Bogue and Mr. Moulton.

The Chairman thereupon asked if there was anyone present who thought it was possible or feasible, or the duty of the Trustees, to present a reorganization plan at this time, and there was no response.

Since the date of such meeting several other general meetings with the representatives of the various interests in the Trust Estates have been held, and the affairs and the financial condition of the Trust Estates laid before and discussed with them, and no one has suggested to the Trustees that they believed it advisable to formulate and propose a plan of reorganization under the existing conditions.

The Trustees have had the Treasurer make a forecast of cash receipts and disbursements from January 1, 1935, to December 31, 1935, which they submit herewith. It is the desire and the intention of the Trustees to continue to assemble data and make the studies which will be necessary in the formulation of the plan for reorganization and to take all steps which in their opinion will facilitate the formulation and making effective of a reorganization plan at the earliest time which seems proper and to the advantage of those interested in the Trust Estates.

We shall be pleased to receive from you any suggestions or advice which you believe may be helpful in bringing about a reorganization plan at the earliest time which would be advisable in view of the situation which surrounds the various Trust Estates.

Respectfully,

FRANK O. LOWDEN (Signed)
JAMES E. GORMAN (Signed)
JOSEPH B. FLEMING (Signed)
Trustees.

NOTE.—This forecast follows a forecast for the last three months of the year 1934, which provided for the payment of General Mortgage interest, $2,039,000; Equipment Trust Series "L" and "Q" principal, $753,000; Equipment Trust Series "L" and "Q" interest, $323,970; total, $3,115,970. If none of these items are paid, it will result in creating a credit of $3,115,970, which constitutes the entire working cash on January 1, 1935. Principal and interest payments for the year 1935 aggregate $9,121,900, and are included in the attached forecast.

Rock Island Lines, Frank O. Lowden, James E. Gorman, Joseph B. Fleming, trustees—Treasurer's forecast of cash receipts and disbursements, Jan. 1, 1935 to Dec. 31, 1935

	January 1935	February 1935	March 1935	April 1935	May 1935	June 1935
Balance, cash on hand first of month	$60,012	$139,644	$710,736	$311,952	$714,099	$1,546,197
RECEIPTS						
Agents account traffic, etc.	5,200,000	4,750,000	5,300,000	4,800,000	4,900,000	5,250,000
Companies and individuals	520,000	480,000	530,000	500,000	500,000	520,000
Traffic balances	500,000	550,000	530,000	650,000	700,000	780,000
Car service	65,000	57,000	60,000	80,000	85,000	90,000
Post Office Department	200,000	220,000	180,000	200,000	190,000	190,000
Express	100,000	45,000	70,000	100,000	110,000	115,000
C., R. I. & G. deposit account	75,000	100,000	150,000	150,000	100,000	200,000
Total receipts	6,660,000	6,202,000	6,820,000	6,480,000	6,585,000	7,145,000
Total cash	6,599,988	6,062,356	6,109,264	6,168,048	5,870,901	5,598,803
DISBURSEMENTS						
Pay rolls	2,650,000	2,680,000	2,630,000	2,900,000	3,000,000	3,060,000
Purchases and supplies	400,000	400,000	450,000	450,000	470,000	470,000
Fuel	510,000	495,000	520,000	480,000	470,000	450,000
Lumber	30,000	30,000	30,000	50,000	50,000	60,000	174
Ties	30,000	30,000	30,000	25,000	25,000	25,000
New rails					753,000	655,000
Principal (all equipment trusts)	540,000				306,315	132,637
Interest payments—Equipment trusts	245,025		9,400			2,099,612
Interest payments—General mortgage						9,072
Interest payments—Rentals and misc.		62,500				

Taxes—General	276,607	395,092	500,816	857,147	26,783	537,678
Taxes—Normal income						16,300
Traffic balances	700,000	600,000	700,000	600,000	650,000	700,000
Car service	270,000	300,000	300,000	280,000	360,000	300,000
Agents' junction settlements	70,000	60,000	75,000	70,000	70,000	85,000
Miscellaneous railroad vouchers	350,000	350,000	380,000	380,000	380,000	400,000
Real estate						
Freight loss and damage	60,000	50,000	60,000	60,000	60,000	50,000
Stock killed and fire claims	3,000	3,500	4,000	3,000	3,000	3,500
Personal injuries	20,000	15,000	25,000	20,000	40,000	30,000
Overcharge freight claims	85,000	70,000	80,000	80,000	70,000	80,000
Miscellaneous clearings	100,000	100,000	100,000	100,000	100,000	150,000
Miscellaneous general vouchers	400,000	400,000	400,000	400,000	450,000	450,000
Employees' Federal pension fund		[2] 732,000	127,000	127,000	133,000	133,000
Total disbursements	6,739,632	6,773,092	6,421,216	6,882,147	7,417,098	9,826,799
Balance cash on hand close of month	[1] 139,644	[1] 710,736	[1] 311,952	[1] 714,099	[1] 1,546,197	[1] 4,227,996

[1] Denotes deficit.

[2] Arrears from Aug. 1, 1934, to Feb. 1, 1935.

Rock Island Lines, Frank O. Lowden, James E. Gorman, Joseph B. Fleming, trustees—Treasurer's forecast of cash receipts and disbursements, Jan. 1, 1935 to Dec. 31, 1935—Continued

	July 1935	August 1935	September 1935	October 1935	November 1935	December 1935
Balance, cash on hand first of month	[1] $4,227,996	[1] $4,554,110	[1] $4,049,875	[1] $4,405,461	[1] $4,259,783	[1] $5,356,995
RECEIPTS						
Agents account traffic, etc	6,050,000	5,850,000	5,450,000	5,980,000	4,900,000	4,950,000
Companies and individuals	600,000	540,000	520,000	550,000	520,000	480,000
Traffic balances	820,000	780,000	600,000	540,000	600,000	500,000
Car service	85,000	75,000	70,000	80,000	75,000	80,000
Post Office Department	200,000	180,000	175,000	200,000	190,000	180,000
Express	85,000	45,000	70,000	75,000	90,000	70,000
C., R. I. & G. deposit account	125,000	100,000	75,000	30,000	200,000	200,000
Total receipts	7,965,000	7,570,000	6,960,000	7,455,000	6,575,000	6,460,000
Total cash	3,737,004	3,015,890	2,910,125	3,049,539	2,315,217	1,103,005
DISBURSEMENTS						
Pay rolls	3,100,000	3,050,000	3,060,000	3,010,000	3,090,000	2,900,000
Purchases and supplies	600,000	650,000	600,000	580,000	580,000	500,000
Fuel	470,000	440,000	430,000	450,000	500,000	450,000
Lumber	100,000	100,000	80,000	50,000	40,000	30,000
Ties	25,000	25,000	25,000	25,000	25,000	25,000
New rails		50,000	50,000	50,000		
Principal (all equipment trusts)	990,000				753,000	
Interest payments—Equipment trusts	228,825		9,400		288,660	117,200
Interest payments—General mortgage						2,039,612
Interest payments—Rentals and miscl		62,500				9,072

Taxes—General	375, 289	81, 765	514, 686	643, 322	99, 552	1, 290, 771
Taxes—Normal income						
Traffic balances	675, 000	800, 000	750, 000	800, 000	750, 000	700, 000
Car service	330, 000	350, 000	320, 000	300, 000	270, 000	280, 000
Agents, junction settlements	85, 000	80, 000	100, 000	90, 000	90, 000	90, 000
Miscellaneous railroad vouchers	400, 000	420, 000	400, 000	380, 000	380, 000	350, 000
Real estate						
Freight loss and damage	75, 000	70, 000	70, 000	75, 000	60, 000	60, 000
Stock killed and fire claims	4, 000	3, 500	3, 500	3, 000	3, 000	3, 000
Personal injuries	20, 000	30, 000	40, 000	30, 000	30, 000	30, 000
Overcharge freight claims	80, 000	70, 000	80, 000	90, 000	80, 000	80, 000
Miscellaneous clearings	150, 000	150, 000	150, 000	100, 000	100, 000	100, 000
Miscellaneous general vouchers	450, 000	500, 000	500, 000	500, 000	400, 000	300, 000
Employees' Federal pension fund	133, 000	133, 000	133, 000	133, 000	133, 000	133, 000
Total disbursements	8, 291, 114	7, 065, 765	7, 315, 586	7, 309, 322	7, 672, 212	9, 488, 355
Balance cash on hand close of month	[1] 4, 554, 110	[1] 4, 049, 875	[1] 4, 405, 461	[1] 4, 259, 783	[1] 5, 356, 995	[1] 8, 385, 350

[1] Denotes deficit

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In the Supreme Court of the United States

OCTOBER TERM, 1934

Nos. 489–490

IN THE MATTER OF THE CHICAGO, ROCK ISLAND & Pacific Railway Company, Debtor

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RECONSTRUCTION FINANCE CORPORATION, PETITIONER

v.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY Company et al.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF OF PETITIONER, RECONSTRUCTION FINANCE CORPORATION

Respondents have filed three briefs in this case, which for convenience we shall refer to as follows:

(1) The brief filed on behalf of the Protective Committee for the debtor's First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds, the Protective Committee for the Consolidated First Mortgage 5% Bonds of the Burlington, Cedar Rapids and Northern Railway Company, and the Protective Committee for debtor's 30-year

4½% Convertible Gold Bonds, as the *"brief for the Refunding Committee."*

(2) The brief filed on behalf of the Protective Committee for the General Mortgage Bonds of The Chicago, Rock Island and Pacific Railway Company, as the *"brief for the General Mortgage Committee."*

(3) The brief filed on behalf of the trustees of the debtor, as the *"brief for the trustees."*

All three briefs impliedly concede, first, that prior to the enactment of Section 77 of the Bankruptcy Act, the great weight of authority would have required the denial of an injunction such as was entered in this case; and, second, that Section 77 does not expressly confer on the court the right to grant this injunction. All briefs argue that the injunction can be justified on one narrow ground only, namely, that it was *necessary* (not merely convenient or expeditious) to issue this injunction in order to have *any* reorganization of the debtor in this proceeding. All the respondents reach this conclusion by arguing that Section 2, clause (15), of the Bankruptcy Act is sufficiently broad to empower the court to issue any order which is necessary to carry out the purpose of Section 77 of the Bankruptcy Act; that the sole purpose of Section 77 is to permit the reorganization of railroads; that any order which is necessary to accomplish such reorganization may be entered by the court under Section 2, clause (15); and that the injunction was necessary in this case to prevent a large increase in indebtedness, or in the number of

classes of creditors, which they assert would prevent a reorganization. The brief of the Refunding Committee likewise attempts to find authority for the injunction in Section 262 of the Judicial Code,[1] citing (brief of Refunding Committee, pp. 29–30) various cases decided thereunder, none of which have to do with a bankruptcy proceeding.

Although all three briefs agree that, on a showing that it was necessary in order to complete any reorganization, the order can be supported under Section 2 (15) of the Bankruptcy Act (the so-called "Omnibus Clause"), the briefs disagree, and are mutually inconsistent, in their explanations of the effect of a sale of the collateral, and as to the propriety of the injunction as to all the collateral held by the Reconstruction Finance Corporation.

On the first question, the brief for the Refunding Committee assumes[2] that purchasers of the collateral would acquire the same rights against

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[1] It should be noted that this is the first reference to Section 262 of the Judicial Code (28 U. S. C. A. 377) by any of the respondents, since none of them cited it in the courts below.

[2] In spite of an inconsistent argument on pp. 11 and 12 of their brief, this assumption must necessarily be inferred from the statement (brief of Refunding Committee, p. 6) that if all the collateral (including the collateral pledged under the three corporate indentures) is sold, claims will be expanded $200,000,000 (approximately the face amount of the collateral). Of course, if purchasers of certain of the pledged bonds (as the brief for the General Mortgage Committee contends) are not creditors for a deficiency on the collateral bonds, the swelling of claims will be considerably less.

the debtor as holders of bonds outstanding at the time of the bankruptcy, a position in which the brief for the trustees apparently agrees (brief for trustees, pp. 4, 34).

On the other hand, the brief for the General Mortgage Committee contends that purchasers of certain of the pledged bonds would not acquire the same rights as holders of bonds outstanding at the time of bankruptcy, but would acquire merely ratable shares in the distributive assets represented by the respective mortgages.

Before taking up these contradictory contentions, we desire to show how this case differs radically on the facts from the case of the five banks.

The brief of the General Mortgage Committee, which is the only brief that attempts a legal analysis of the different situations presented divides the Reconstruction Finance Corporation collateral into four groups (brief of General Mortgage Committee, pp. 8–10). We shall discuss these different groups in inverse order.

Fourth Group.—Collateral consisting of obligations of companies not involved in this bankruptcy proceeding.

The collateral in this group consists of $9,926,965.85 of bonds and an assignment of the principal debtor's share in certain assets of the

Railroad Credit Corporation estimated to have the value of $1,400,000.[3]

The General Mortgage Committee virtually admits that the injunction is in error as to all of this collateral. This admission appears on page 13 of the brief of the General Mortgage Committee where "ordinary collateral" is defined to mean "mortgage bonds or other securities which do not represent any interest in the estate or estates which the Court is administering", and where the following statement is made, viz:

> We do not understand that either in equity or in bankruptcy (*including Section 77 of the Bankruptcy Act*) a Court has the power to enjoin or control the sale by a pledgee of ordinary collateral. (Italics supplied.)

None of the collateral in this Fourth Group consists of mortgage bonds or other securities which "represent any interest in the estate or estates

[3] It should be noted that the only reference in the Circuit Court of Appeals' opinion to the claim against The Railroad Credit Corporation, comprised in the collateral held by the Reconstruction Finance Corporation, is the footnote reference (R. 316) in the opinion, that "$1,400,000 of the collateral given to R. F. C. was not bonds." The statement (brief of Refunding Committee, p. 24) of the Refunding Committee that the Reconstruction Finance Corporation was careless in saying in its brief (main brief of R. F. C., p. 13) that the Circuit Court of Appeals failed to note in its opinion that The Railroad Credit Corporation is a corporation entirely alien to the debtor or any of its subsidiary railroad companies, is unwarranted.

which the Bankruptcy Court is administering." The obligor companies are all companies not involved in this bankruptcy proceeding. Only one of the companies is wholly owned by the principal debtor. This one is not a railroad company. The other two companies, though railroad companies, are not operated as part of the principal debtor's operating system (brief of Refunding Committee, p. 24, footnote).

The endeavor of the Refunding Committee to uphold the injunction as to this collateral by calling it "system obligations" simply does not stand up under analysis. This Committee contends (brief, p. 24, footnote) that if this collateral is sold, it will cause the bankruptcy of the only one of the obligor companies, which is wholly owned by the principal debtor. Accordingly, we are led to infer that its properties will be part of the "estate or estates which the Court is administering." The point is that these obligor companies are *not* in bankruptcy and the court is *not* administering the properties on which these bonds are a lien. Whether or not bankruptcy will result for one of the companies if the bonds are sold is obviously only a surmise. We assume that this court will not care to venture into the field of economic prophecy.

Assuming for argument the correctness of the prevision in which the Refunding Committee indulges, the argument is one which neutralizes the assertion in its brief (brief of Refunding Committee, p. 10) that no plan of reorganization for the

debtor and its subsidiaries can be prepared until all possible classes of creditors involved in the proceeding and the amounts of claims in each class are definitely fixed. If the latter is a sound argument, then no parent company, like the principal debtor in the instant case, having numerous subsidiaries all with outstanding obligations, can be reorganized under Section 77, nor can even a plan of reorganization be drafted, until both the principal debtor and all such subsidiaries are joined in the debtor proceeding, so as to remove the possibility of a creation of new classes of claims which would come into being upon the filing by the subsidiaries from time to time, as permitted by subdivision (a) of Section 77, of petitions in the same bankruptcy proceeding.

Third Group.—Collateral consisting of bonds of companies which have been joined, in the instant bankruptcy proceeding with the principal debtor, which, however, has not guaranteed their bonds.

Comprised in this group of collateral are $7,258,000 face amount of bonds (the bonds of the Chicago, Rock Island & Gulf Railroad Co.), which it is admitted are neither guaranteed by the principal debtor nor are the properties subject to the mortgage liens, under lease to the principal debtor. The remainder, $2,306,000 face amount, are bonds of subsidiaries which likewise are not guaranteed by the principal debtor, but which, the General Mortgage Committee asserts, are liens on subsidiary

properties which are under lease to the principal debtor. (Brief of General Mortgage Committee, pp. 9, 10.) As a matter of fact, it appears of record (R. 92, 93) that these leases are *terminable at will,* except as to properties a mortgage on which is security for $100,000 of these bonds.

The obligor companies in this group are all companies which were joined in the bankruptcy proceeding after the petition for the injunction was filed with the District Court and while it was under advisement by that court (R. 97–99). Since none of the bonds are guaranteed, there is no way, *unless we are to disregard entirely the separate corporate entities of the principal debtor and its subsidiaries,* in which the sale of these bonds, if permitted, can increase the amount of claims outstanding against the principal debtor. In the case of the single lease that is not terminable at will, possibly there might be some increase under Section 77 in the amount of general claims if the trustees of the principal debtor, as they have the right to do, do not adopt the lease, but an increase of claims resulting from the nonadoption of this lease[4] is irrelevant to the issues presented in this litigation.

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[4] Under the provision contained in the last sentence of subdivision (b) of Section 77, future rent claimants are specifically made creditors "for all the purposes of this section and of the reorganization plan, its acceptance and confirmation." Under this provision, which for the same purposes defines "creditors" as "all holders of claims, interests, or securities of whatever character against the debtor

The brief of the Refunding Committee disingenuously suggests (brief of Refunding Committee, pp. 10, 24, and elsewhere) that the injunction should be supported as to this Third Group of collateral, because the obligor companies are subsidiaries of the principal debtor and hence their obligations are "system obligations."

The brief of the General Mortgage Committee (brief, p. 46), on the other hand, refers to the order of classification of the District Court (Appendix to R. F. C. brief, pp. 133–142), which does not provide separate classes for all the various issues of bonds in this Third Group. The short answer to this is that this order of classification is in error in not purporting to classify separately the claims against each of the several debtors in the instant multiple proceeding.[8] Suffice to say, the method of classifi-

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or its property * * * whether or not such claims, interests, or securities would otherwise constitute provable claims under this Act", it is clear that a pledged creditor such as the Reconstruction Finance Corporation is entitled to vote both on its notes and on the pledge securities; hence, there can be no swelling of votes if the collateral is sold (see pp. 20–26 of this brief, *infra*).

[8] It may not be out of place to remark that a hearing on a motion to amend the District Court's order of classification in another respect, not pertinent here, is now pending in the District Court in Chicago (hearing on petition No. 37 A in the instant reorganization proceedings, set for February 15, 1935). It should be noted that the order does not purport to be final since the court reserved jurisdiction to make "from time to time such further orders amplifying, extending, limiting or otherwise modifying" the order "as to the court may at any time seem proper." (Appendix, R. F. C. brief, p. 141.)

cation of creditors, which we suggest as the only correct method, has been adopted in the Missouri Pacific debtor proceeding under Section 77 (Order No. 234, entered Sept. 26, 1934, in the Missouri Pacific debtor proceeding).

The brief of the General Mortgage Committee admits (p. 41) that the District Court's order of classification is in error as is implied in the statement contained in that brief "that the trustees, as trustees of one estate, may have claims against another estate."

That this is so is beyond dispute. It is equally beyond cavil that regardless of the provision in subdivision (a) of Section 77 for a multiple proceeding, both the principal debtor and each of the subsidiaries, *unless we are to disregard the corporate entities,* must be treated as distinct corporations. Bonds of a subsidiary when negotiated to the parent company for value (the record, p. 13, shows that the bonds involved in this case were mostly issued at par in consideration of advances) are duly issued and outstanding regardless of whether or not they are (1) still held in the treasury of the principal debtor, (2) pledged by the principal debtor with pledgees, or (3) outstanding with the public. Unless this is so, the results would be inequitable and would violate the requirements of subdivisions (d), (f), and (g) of Section 77 for a plan of reorganization, as the General Mortgage Committee itself suggests (brief of General Mortgage Committee, p. 46).

Second Group.—Bonds of subsidiaries guaranteed by the principal debtor.

In the collateral held by the Reconstruction Finance Corporation there are only two bond issues of this character, $9,374,500 face amount of St. Paul and Kansas City Short Line First Mortgage Bonds and $3,862,000 face amount of Rock Island, Arkansas and Louisiana First Mortgage Bonds (brief of General Mortgage Committee, pp. 8–9).

What we have heretofore said in regard to respecting separate corporate entities applies with equal force as to these bonds. They differ from the negligible face amount ($100,000) of bonds in the Third Group of companies under long-term lease, also, in the feature of a guaranty by the principal debtor.

In our main brief (main brief of R. F. C., pp. 93 and 94) we insisted, and insist here again, that there can be no "increase in the debt structure" by the sale of any of the bonds in Groups Fourth, Third, and Second. This is indisputable, unless, as demonstrated above, *separate corporate entities are to be disregarded.* As with the bonds in Group Fourth and Third the bonds in Group Second are corporate issues, issued under corporate indentures with acting corporate trustees. If, as the General Mortgage Committee contends (which we dispute), the guaranty by the principal debtor of the bonds in Group Second is not enforcible by pledges of the bonds, it is enforcible by the cor-

porate trustees, forthwith upon the bankruptcy of the principal debtor (see *Maynard* v. *Elliott,* 283 U. S. 273) such trustees are required, under the terms of the corporate indentures under which they are acting, to act for all bonds authenticated and outstanding under said indentures, whether or not the bonds were issued for purposes of pledge, or were issued outright to holders.

Incidentally, it should be noted that the $9,374,-500 face amount of St. Paul and Kansas City Short Line First Mortgage Bonds, pledged with the Reconstruction Finance Corporation, are part of a single issue of which $9,981,940 face amount of the balance are outstanding with the public; and that likewise the $3,862,000 face amount of Rock Island, Arkansas and Louisiana First Mortgage Bonds similarly pledged are part of a single issue of which the remaining $11,000,000 face amount are outstanding with the public. In each case both the pledged bonds and the bonds outstanding with the public were issued under the same corporate indenture and the interests of the holders are represented by the same corporate trustees (White and Kemble's Atlas and Digest of Railroad Mortgages, corrected to July 1932, division on The Chicago, Rock Island and Pacific Railway Company, pp. 1, 8–9).

Each of the companies obligated on bonds comprised in the Reconstruction Finance Corporation collateral is *a separate corporate entity,* having its

own creditors (general and/or secured), its own separate board of directors, its own staff of officers, and its own separate contractual relationships. Unless these legal relationships are to be ignored, the mere fact that either (1) all or part of their stock (the record is silent on this point, and we have no means of knowing which of the companies are wholly owned) is owned by the principal debtor, except for directors' qualifying shares; or (2) some of these companies are under lease to the principal debtor (the leases being either terminable at will or capable of nonadoption by the trustees of the principal debtor); or (3) some of their bond issues are guaranteed by the principal debtor; affords no legal basis for a disregard of the separate corporate entities concerned. Bankruptcy of one or more of these concerns cannot, under any theory of law of which we are aware, have this effect.

Unless corporate entities are disregarded there can be no "increase in debt structure" resulting from the sale of the bonds of other companies pledged with Reconstruction Finance Corporation. The injunction appealed from is clearly in error as to such bonds. With a minor exception,[6] all of the collateral held by Reconstruction Finance Corporation consists of such bonds except $7,575,000 face amount of bonds of the principal debtor.

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[6] The claim against The Railroad Credit Corporation.

First Group.—$7,575,000 face amount of bonds of the principal debtor.

As to these bonds, the argument of the General Mortgage Committee, viz, that the holders of the pledged bonds have only a ratable share in the mortgaged assets and are not entitled to prove in bankruptcy *on the face amount of their bonds,* is unsupported by the authorities.

The bankruptcy cases of *First National Bank of Beaumont* v. *Eason,* 149 Fed. 204; *John Matthews, Inc.,* v. *Knickerbocker Trust Co.,* 192 Fed. 557; and In re *Wise Shoe Co.,* 2 Fed. Supp. 521; and the equity cases of *Union National Bank* v. *People's Savings & Trust Co.,* 28 F. (2d) 326; In re *Waddell-Entz Co.,* 67 Conn. 324; *Third National Bank* v. *Eastern Railroad Company,* 122 Mass. 240; and *People* v. *Remington,* 54 Hun 480, upon which the General Mortgage Committee relies, all have to do with situations where unsecured notes of the debtor had been pledged to secure the same debtor's unsecured note. In such cases, as shown in our main brief (main brief of R. F. C., pp. 34, 45, 46, footnote 3), the courts have considered that unsecured notes of the same debtor do not in commercial parlance constitute "collateral." A pledgee holding unsecured notes of a bankrupt does not have a lien within the meaning of Section 67 (d) of the Bankruptcy Act and is not entitled to the rights afforded by Section 57 (h) of the Act. Since

it is under these sections that a pledgee in possession of "collateral" is entitled to sell collateral, cases involving pledge of unsecured notes, such as those cited in the General Mortgage Committee's brief have no application whatever in the instant case. In the case of *In re Battle Island Paper Co.*, 259 Fed. 921, also relied upon by the General Mortgage Committee to support their position, the exact holding of the court, regardless of the language of the opinion, which is somewhat confusing, was that a creditor holding pledged bonds could not have a general claim against the unmortgaged assets of the debtor for deficiency both on the bonds and the notes. As is shown by the case, the court permitted a claim for deficiency on the bond collateral after the creditor had received a distributable share of the assets of the mortgaged property. In other words, the court allowed a deficiency claim to be proved on the *bonds,* which certainly does not support the proposition for which the case is cited by the General Mortgage Committee. In *Hitner* v. *Diamond State Steel Co.,* 176 Fed. 384, upon which the General Mortgage Committee also relies, there was no injunction against the sale of collateral involved. The question was merely one of provability under the equity rule (different from that in bankruptcy) which permits a claim on the total debt before the liquidation. The language of the opinion is adverse to the General Mortgage Committee's

contention, since the court implied (p. 399) that a sale of the collateral (consisting of the insolvent's own bonds) would have been proper, and a purchaser would have acquired full rights on the bonds.

The *dictum* of the Court in the *Dibert* v. *D'Arcy,* 248 Mo. 617 (the only other case relied upon by the General Mortgage Committee), condemning a pledgee's power of sale was wholly *obiter,* but by reason of the emphatic position taken by the Court in this equity case, the opinion has been accepted as the law in Missouri. Obviously, the holding here has no authority outside that jurisdiction, and has been expressly repudiated in a recent case. *Gilbert* v. *Fosston Mfg. Co.,* 174 Minn. 68, 80, 81; 218 N. W. 451.

The effective answer to the argument of the General Mortgage Committee is that a secured bond consists of more than merely a promise and an unrelated lien. What the holder owns is a piece of property, an amalgam of the promise with the lien. In this respect, the situation is the same with bonds validly issued outright, and bonds validly pledged. And there is no proper distinction between a pledge by a corporation of its own bonds and a pledge by it of the bonds of other corporations. The pledgee, as holder, has an assignable piece of property. Having possession, he can maintain an action for conversion. *Carter* v. *Lehman,* 90 Ala. 126. Furthermore, he has an undeniable right to repledge; *Brown* v. *Spofford,* 95 U. S. 474;

Brooklyn, etc., R. Co. v. *National Bank,* 102 U. S. 14. The pledgee is, together with other holders of bonds on the same issue, a tenant in common of the mortgage. In all these respects the thing, of which the pledgee has possession, is something quite different from an unsecured note.

It necessarily follows that, if the contention of the General Mortgage Committee is sustained by this Court, the marketability after bankruptcy of pledged bonds of the same debtor will be destroyed. Where other bonds of the same issue are outstanding, obviously two kinds of bonds of a same issue will be created, those entitled to full bondholder's rights, and those which represent merely a ratable share in the mortgaged assets. Not to mention the practical difficulties where the issue is a large one with stock exchange listing, the economic consequences will be serious. Since railroads, because of charter and statutory restrictions, ordinarily cannot engage in general lines of business, the only type of collateral which they can usually offer a bank, or other money lender, are bonds of the company itself or its subsidiaries or affiliates. A holding by this Court, such as suggested by the General Mortgage Committee, will gravely cripple railroad corporations in the short-term money market.

In its brief the Refunding Committee makes only two affirmative points. These points will be answered in the same order.

I

THE INJUNCTION IN THE INSTANT CASE IS NOT NECESSARY FOR THE ENFORCEMENT OF THE PROVISIONS OF SECTION 77, SINCE LEAVING THE COLLATERAL FREE FOR SALE WILL NOT PREVENT THE CONSUMMATION OF A PLAN OF REORGANIZATION.

As heretofore discussed, the General Mortgage Committee contends that, in case of a sale of the pledged bonds of the principal debtor, the purchasers obtain only a ratable share in the assets secured by the mortgages. On the other hand, the Refunding Committee takes an inconsistent view that a sale of the collateral would swell claims to the extent of the full face amount of the pledged bonds, less any proceeds of the sales (brief of Refunding Committee, p. 6). The Refunding Committee, in saying that the proceeds of the sales "would be relatively small" (brief of Refunding Committee, p. 6), and that a sale of the collateral held by the banks and the Reconstruction Finance Corporation (*plus* the collateral held under the three corporate indentures) would swell claims to the extent of $200,000,000, would seem to be unduly pessimistic in view of the following facts:

(1) Approximately $33,000,000 of the $200,000,000 amount consists of capital stock (brief of Refunding Committee, pp. 5–6), the sale of which would not swell claims at all; and

(2) the remainder of the collateral, or the bulk of it, consists of first-mortgage liens, the value of

which, even in a time of depression, is considerable[7]; and

(3) since proceeds received by the pledgees on a sale, in excess of the amount of the pledgees' claims against the debtor, belong to the debtor's estate and would have to be returned to the trustees for the debtor, the maximum amount by which claims might be "swelled" might conceivably be reduced to only a fraction of the $200,000,000 figure which the Refunding Committee is so alarmed about.

Be that as it may, we submit that the matters are irrelevant to the issues here involved. The argument of the Refunding Committee on the point is without support in the law.

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[7] A detailed description of the collateral held by the banks and the Reconstruction Finance Corporation appears in the brief of the General Mortgage Committee (brief of General Mortgage Committee, pp. 8–10), but none of the respondents include in their briefs any description of the collateral subject to the respective liens of the three corporate indentures. Besides the stock already mentioned, such collateral appears to consist of the following: $38,400,000 face amount of General Mortgage Bonds of the principal debtor (a first lien) and miscellaneous bonds constituting a first lien on various subsidiaries, up to a total of $66,495,000 face amount of bonds, pledged with the trustees for the principal debtor's First and Refunding Mortgage; $45,000,000 face amount of the principal debtor's First and Refunding Mortgage Bonds pledged with the trustee for the principal debtor's Secured 4½ percent Bonds; and $1,365,000 face amount of First Mortgage Bonds on a subsidiary pledged with the trustees of the principal debtor's General Mortgage (White & Kemble's Atlas and Digest of Railroad Mortgages, corrected to July 1932, section on The Chicago, Rock Island and Pacific Railway Company, pp. 4–6).

A

FOR THE PURPOSES OF SECTION 77 AND OF THE REORGANIZATION PLAN, ITS ACCEPTANCE AND CONFIRMATION, PLEDGEES ARE CREDITORS BOTH IN RESPECT OF THEIR NOTES AND IN RESPECT OF PLEDGED BONDS.

In our main brief (main brief of R. F. C., pp. 91–92) we quoted and discussed the provision contained in the last sentence of subdivision (b) of Section 77, which reads as follows:

> The term "creditors" shall, except as otherwise specifically provided in this section, include, for all purposes of this section and of the reorganization plan, its acceptance and confirmation, all holders of claims, interests, or securities of whatever character against the debtor or its property, including claim for future rent, whether or not such claims, interests, or securities would otherwise constitute provable claims under this Act.

We likewise quoted the same provision in the brief accompanying the Reconstruction Finance Corporation's petition for writs of certiorari, which was allowed by this Court. The respondents in their answering brief to the petition ignored this statutory provision, and in their briefs filed with this Court in the instant case have failed to give effect to the language. The brief of the trustees (brief of the trustees, p. 43) states that Reconstruction Finance Corporation's position that it is entitled to vote both on its notes and on the pledged collateral is a "novel" one.

It is an accepted canon of statutory construction that effect must be given to the express words of a statute. From the above statutory provision it is plain that "for all purposes of Section 77 and of the reorganization plan, its acceptance and confirmation", a pledge creditor, whether or not prior to the enactment of Section 77 he could prove both on his notes and on the pledged securities, must be regarded as a creditor both in the class of secured note holders and in the various classes in which the pledged securities are included. It is significant that under the above-quoted provision and under the similar provision contained in Section 77B relative to corporate reorganizations (fifth sentence of subdivision (b) of Section 77B) claimants for future rent constitute "creditors", although prior to the enactment of these acts they did not have provable claims in bankruptcy.[8]

If the pledge is a valid one, someone is entitled to vote upon the pledged bonds. As between the pledgor and the pledgee, the pledgee has this right until the loan has been fully repaid.

Unless the right is accorded the pledgee, he has no greater voice in the approval or disapproval of

[8] Regardless of what the rule may have been as to provability of claims in ordinary bankruptcy, clearly subdivision (b) of Section 77 has operated as an amendment with respect to proceedings under Section 77. See discussion of corresponding provision in Section 77B in Friendly, *The Corporate Reorganizations Act*, (1934) 48 Harvard Law Review, 39, 62. But see reference to effect of Section 74 in *Manhattan Properties, Inc.*, v. *Irving Trust Co.*, 291 U. S. 320, 336, 337.

a plan than an unsecured noteholder. The injury which may result to a pledgee unless he is allowed a vote on the pledged bonds may readily be illustrated. For instance, the plan of reorganization eventually evolved in the instant proceeding may merely provide for the extension of the notes held by the banks and the Reconstruction Finance Corporation, or, in other words, their conversion into a collateral trust issue. Are we to say that in such a case the pledgee is to have no voice in determining the terms and provisions of the underlying securities but is to be required to accept that which is acceptable to committees for the underlying classes, whose interests may be conflicting? In many cases the holders of the underlying securities now held by the Reconstruction Finance Corporation are so scattered and inarticulate that they haven't even a committee representation.

The above-quoted provision of subdivision (b) of Section 77, the language of which the respondents have ignored in their briefs, furnishes an effective answer to their contention that leaving the collateral free for sale creates an "insuperable mechanical difficulty" (brief of Refunding Committee, p. 14) to the preparation and consummation of a plan of reorganization. The total amount of bonds or stock of each issue which must be dealt with in a reorganization is the aggregate principal amount outstanding at the date the petition is filed, including bonds or stock legally issued and out-

standing on that date in the hands of pledge creditors.

If effect is given to the express language of the statute the mechanical difficulty referred to by the respondents disappears. In reckoning what constitutes the vote of two-thirds of any one class of creditors there must be counted all bonds lawfully outstanding, including bonds validly in the possession of pledgees. The same method must be used in determining what constitutes 10 percent of a class entitled under the first sentence of subdivision (d) of Section 77 to present a plan of reorganization. Respondents emphasize unduly their contention. The only other situation in which Section 77 calls for taking a percentage of security holders is the provision of subdivision (a) of Section 77, which permits creditors "having claims or interests aggregating not less than 5 per centum of all indebtedness of such railroad" to file an involuntary petition. Although Section 77 was approved March 3, 1933, this provision has proved of academic importance since all the petitions which have been filed under Section 77 up to date have been voluntary petitions of the respective debtors (see main brief of Reconstruction Finance Corporation, pp. 102–104, footnote 40).

The respondents' contention, if followed up, produces absurd results. If it is indeed true that pledge creditors must be enjoined from selling their collateral before the amount of securities in each class is definitely determined, obviously an injunction

will have to be granted in the case of every railroad reorganization under Section 77 where there are outstanding bank loans or loans from the Reconstruction Finance Corporation. Since the Reconstruction Finance Corporation has made loans to most of the major roads which are now under Section 77, or are likely to file under Section 77, this means the Reconstruction Finance Corporation must be restrained from enforcing its pledge contract in each one of these proceedings. The respondents' contention that the instant case is an unusual one calling for a unique employment of the residuum of power granted to bankruptcy courts by the so-called "Omnibus Clause" (Section 2 (15)) of the Bankruptcy Act becomes a little thin. If full effect is given to respondents' contention, such injunctions must be continued in force throughout the tortuous length of the proceedings until a plan of reorganization has finally been submitted to the Commission, recommended by it, approved by all the various classes of security holders, and confirmed by the court.

Again, it is true that in every reorganization, whether a Section 77 proceeding or an equity receivership, the claims of general unsecured creditors are never definitely fixed. Uncertainty as to the exact amount of these claims, on the other hand, creates no practical difficulty to reorganization. In asserting that no plan can be formulated until the exact amount of claims in each class is ascertained, (brief of General Mortgage Committee, p. 10)

the respondents do not approach the problem realistically. We are confident that this Court will construe Section 77 with a view to pragmatic results, giving effect to all the express language thereof.

The illustrations of the respondents (brief of Refunding Committee, pp. 12–13; brief of General Mortgage Committee, p. 37) of the supposedly inequitable results that might flow from according pledgees votes both on their notes and on their collateral are based on a concealed premise that the pledges are invalid and that the pledgees are not entitled to representation in accordance with their financial and contractual interest. They also assume that the power to vote will be used to accomplish inequitable or fraudulent results. For the point for which they are cited, they are no more convincing than an instance where holders of more than two-thirds of the stock also owned two-thirds or more of a single issue of mortgage bonds, which precedes the stock. Pushed to its logical conclusion, the respondents' contention would deny a vote to stockholders, who are also bondholders, for fear that the common voting power might be used to oppress the minority bondholders. The effective answer in each case is that unless we are to disregard the express language of the statute, dual voting must be allowed in both situations. Under subdivisions (d), (f), and (g) of Section 77, neither can the Interstate Commerce Commission approve a plan of reorganization, nor can the court confirm it without findings that the plan is "equitable" and

does not "discriminate unfairly in favor of any class of creditors or stockholders." These subdivisions are designed to block any proposed plan of reorganization which is inequitable.

B

FREEDOM TO SELL THE COLLATERAL WILL EXPEDITE RATHER THAN RETARD REORGANIZATION.

This point was fully covered in our main brief (Reconstruction Finance Corporation brief, pp. 96–100), to which we again refer the Court. None of the respondents has as yet made any effective answer to the matters therein discussed. As shown in our main brief (Reconstruction Finance Corporation brief, pp. 102–104, footnote 40), although Section 77 was enacted nearly two years ago, the characteristic of the proceedings thereunder has been the slow rate of progress made. This condition will continue unless creditors can exert leverage to bring about a compromise of conflicting claims.

The contention of the Refunding Committee (brief of Refunding Committee, p. 12) that the "collateral would have to be recognized in quite a different way if it was sold from the way it will be recognized if it is retained", when analyzed, is based on the here overt premise that no effect should be given to the terms of the pledge contract. This is merely to assume the point at issue. In other words, the pledge creditor should have a no greater bargaining position in a reorganization than an unsecured one, who under the provisions of

subdivisions (e), (f), and (g) of Section 77 is likewise entitled to a voice in the approval or disapproval of a plan.

As a matter of fact, the validity of all the pledge contracts involved in this case is admitted by all the parties. The bonds involved are "collateral" in both commercial and legal parlance. Moreover, they were issued under corporate indentures containing carefully drawn provisions regulating the issuance of bonds and designed to prevent any overissue, such as the courts have had to deal with in the cases involving security consisting of the multiplication of a personal debtor's unsecured promises. In accordance with the terms of those corporate indentures, they bear the authentication of corporate trustees who have certified that the bonds are part of the limited issues provided for in the corporate indentures. Furthermore, in the case of issues since the effective date of the Transportation Act of 1920, they bear the stamp of approval of the Interstate Commerce Commission which, under Section 20a of the Interstate Commerce Act, since that date has had the duty imposed upon it of approving the security issues of carriers subject to the Interstate Commerce Act.

In case of some of the issues, bonds of the same issue are held by public holders who acquired their bonds with notice of the terms of the corporate indenture, including specifically the restricted permission to issue further bonds, upon

the terms and conditions therein set forth, either for purposes of pledge or to direct purchases. It is a little late for the committees representing bondholders to attempt to negative the pledge with the Reconstruction Finance Corporation (as upholding this injunction will do) as security for loans made by the Government, which went in part to pay interest on the very bonds (see Appendix, pp. 28, 29, 70) represented by some of the committees which have urged this injunction. The time to have objected was before the pledges were made, when the applications for the loans were before the Interstate Commerce Commission and the Reconstruction Finance Corporation, for action by those governmental agencies, respectively. To recognize the contention now is to deprive pledgees of their contract rights for the benefit of bondholders, who became such under mortgage contracts which permitted the issuance and pledging of additional bonds. Furthermore, the effect of sustaining the contention now will tend to retard rather than expedite reorganization.

C

AS SHOWN IN OUR MAIN BRIEF THE FINDINGS OF THE DISTRICT COURT UPON WHICH THE ORDER WAS PREDICATED ARE UNWARRANTED ASSUMPTIONS; AND THE CASE WILL BE DETERMINED UPON ITS MERITS BY THIS COURT

As shown in our main brief (main brief of R. F. C. pp. 89–100) the findings upon which the order of the District Court are predicated are unwarranted assumptions.

Under the circumstances this Court will determine this case on its merits.

Smith v. *Vulcan Iron Works,* 165 U. S. 518, 525;

In Re *Tampa Suburban Railway Co.,* 168 U. S. 583;

Mast Foos & Co. v. *Stover Mfg. Co.,* 177 U. S. 485, 494, 495;

Harriman v. *Northern Securities Company,* 197 U. S. 244, 287;

U. S. F. & G. Co. v. *Bray,* 225 U. S. 205, 214;

Denver v. *New York Trust Co.,* 229 U. S. 123, 136.

D

A DECISION HOLDING THAT THE PETITIONERS ARE FREE TO SELL THEIR COLLATERAL WILL NOT ALSO DETERMINE THE RIGHTS OF THE CORPORATE TRUSTEES UNDER THREE OF THE PRINCIPAL DEBTOR'S CORPORATE INDENTURES.

Obviously, the terms of the principal debtor's corporate indentures differ from the terms of the notes held by the pledgees; the collateral pledged under the former (a substantial part of which consists of stock) is not the same as the collateral involved in this case; and, though the respondents refer ambiguously to the bonds pledged under the three mortgages as "system obligations", there is no proof under which of the four groupings of the General Mortgage Committee it falls (brief of General Mortgage Committee, pp. 8–10), or whether it falls under some other grouping.

Apart from the realistic aspects,[9] a decision in this case cannot determine the rights of the mortgage trustees with respect to the collateral held by them. The latters rights can only be adjudicated in a proceeding where the terms of the contracts, the application of the legal principles involved, and the character of the collateral are at issue.[10]

II

THE UNPROVED PREMISE OF RESPONDENTS' WHOLE ARGUMENT IS THAT SECTION 77 OF THE BANKRUPTCY ACT HAS WIPED OUT THE DISTINCTION BETWEEN PROPERTY IN POSSESSION OF THE DEBTOR, AND PROPERTY OUTSIDE ITS DOMINION. THERE IS NO BASIS FOR THIS ASSUMPTION AND RESPONDENTS' WHOLE ARGUMENT FALLS.

Respondents' argument, when subjected to analysis, really assumes the point at issue; and, having done so, respondents proceed to demonstrate that the injunction against sale of collateral was properly issued.

The point at issue is whether under the terms of Section 77, a court may reach beyond the property in the immediate dominion of the bankrupt. Courts have consistently held, heretofore, that this could not be done. We do not understand this to be disputed. Courts have likewise held that a

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[9] Discussed *infra* at pp. 38–39 of this brief.

[10] We desire to point out that statement, made in our main brief (main brief of R. F. C., p. 31) has been misconstrued by the Refunding Committee (brief of Refunding Committee, p. 41), given quite a different implication, that we concede that in spite of the provisions of subdivision (1) of Section 77, the court has power to enjoin the sale of the collateral held by the trustees of the three mortgages.

pledge creditor differed from an unsecured creditor in that—

> for practical purposes the pledgee has * * * immediate dominion * * * and with it goes the power to resist any action by the bankruptcy court, which must be founded on the fact that the bankrupt had such dominion when the petition was filed. (Learned Hand, J., in re *Hudson River Navigation Corporation*, 57 F. (2d) 175.)

The jurisdiction of a bankruptcy court has been thus limited to the property of the debtor under his dominion when the petition was filed. This entailed a sharp distinction between creditors who were unsecured (as in the case of *John Matthews, Inc.* v. *Knickerbocker Trust Co.*, 192 Fed. 557),[11]

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[11] It should be noted in this connection that the Refunding Committee ineffectually attempts to dismiss *In re Ironclad Mfg. Co.*, 192 Fed. 318 (brief of Refunding Committee, p. 33) as not being authority for the proposition that the sale of collateral consisting of *secured* bonds of the bankrupt will not be enjoined. The decision in this case was by the Second Circuit which one month prior had decided *John Matthews* v. *Knickerbocker Trust Co.*, 192 Fed. 557. It is indisputable that the Second Circuit had the *Matthews* case in mind at the time of the decision in the *Ironclad* case, as may be seen from the following time table:

John Matthews v. *Knickerbocker Trust Co.*, 192 Fed. 557:

Petition to revise, filed in C. C. A.	Sept. 21, 1911
Briefs for petitioner, Knickerbocker Trust Co. filed.	Oct. 24, 1911
Briefs for respondents filed	Nov. 2, 1911
Decision handed down	Dec. 11, 1911

In re Ironclad Mfg. Co., 192 Fed. 318:

Petition to revise, filed in C. C. A.	Oct. 16, 1911
Briefs for unsecured creditors filed	Oct. 24, 1911
Briefs for respondents filed	Nov. 3, 1911
Decision handed down	Jan. 8, 1912

and whose right to recover depended solely on their share in the hotchpot, as contrasted with creditors who held property withdrawn from the hotchpot.

In the *Ironclad* case, the briefs used, which are on file for general reference in the library of the Bar Association of the City of New York, show that counsel discussed the *Matthews* case in their briefs, and distinguished the bonds in the former as "ordinary debenture bonds and not lien bonds, secured by property of the corporation, as are those in controversy" (Brief of respondents Philadelphia Warehouse Co. et al., p. 10). Counsel also stated in their brief (brief of respondent McKeesport Tin Plate Co., p. 9) "both of these cases (Matthews case & First Nat. Bank v. Eason, 149 Fed. 204) are to be distinguished from the present case because in * * * the present case the bonds pledged were bonds secured by a mortgage on property." The Refunding Committee has completely missed the point of the case. It is not that the decision rests "on a mistaken view of the holding of *Jerome* v. *McCarter*, 94 U. S. 734" (Refunding Committee Brief, p. 33)—but on the contrary (*a*) the Second Circuit either overruled the *Matthews* case *sub silentio* (see, Glenn, *Creditors Rights and Remedies* (1915), Sec. 545) or (*b*) considered the two cases as so obviously distinguishable that extended opinion was deemed unnecessary.

The above explanation is of particular significance in view of the contention of the respondents in the instant case (brief of General Mortgage Committee, p. 51, brief of Refunding Committee, p. 32) that the *Ironclad* case is the only case supporting the petitioners' right to sell their collateral. Relative to this remark, it should be observed:

(a) In *Jerome* v. *McCarter*, 94 U. S. 734, which the respondents attempt to discredit (brief of General Mortgage Committee, pp. 49–50, brief of Refunding Committee, p. 33) by showing that the case came to this Court, during the pendency of a bankruptcy proceeding, on an appeal from an equity foreclosure, this Court flatly stated that pledgees have a clear right to use pledged bonds, "either by sale or collection, until the full amount of the debt due from the mortgagors is satisfied." Though the exact point decided

The English term for this latter class, " outside creditors ", is both apt and descriptive. Pledge creditors under the bankruptcy law prior to Sec-

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in the case was merely that the trustee of a mortgage had a right to foreclose on the debtor's equity of redemption, over the objection of the debtor's assignee in bankruptcy, who had been joined as a party defendant in the equity suit, the assignee in bankruptcy whose position thus was not sustained, had set up, among other things, as an assignment of error on the appeal, that the holders of some of the bonds, for whose benefit the suit was instituted, had originally been held in pledge, and that the sale thereof by the pledgees *after* bankruptcy had been invalid. So the court expressly sustained the right of a pledgee to sell his collateral, consisting of the corporation's own secured bonds, notwithstanding bankruptcy of the pledgor. In part, at least, in reliance upon the authority of the *McCarter* case and of the *Ironclad* case, literally hundreds of millions of dollars of now outstanding collateral loans to railroads and other corporations have been made (for figure as to loans to railroads, see main brief of Reconstruction Finance Corporation, p. 75). The endeavor of the respondents to discredit the *McCarter* case, as an *equity* case, while in their own argument, relying on such equity cases as *Hitner* v. *Diamond State Steel Co.* and *Dibert* v. *D'Arcy* (this brief, *supra*, pp. 15–16), is disingenuous, to say the least.

(b) Though not so qualified by the respondents, obviously, the remark can only be intended to apply to the $7,575,000 principal amount of the principal debtor's own bonds. As to the remaining collateral, which as heretofore shown (*supra*, pp. 4–14) consists of obligations of other corporations, the whole weight of authority supports the petitioners' position. (See main brief of Reconstruction Finance Corporation, pp. 32–44.)

(c) Perhaps, one reason why there have not been more cases involving the right of a pledgee to sell after bankruptcy pledged collateral, consisting of the bankrupt's own *secured* bonds, is that the right, up to the instant case, has rarely been questioned. It is significant that all of the cases upon which

tion 77 have been consistently held to be in that class. And rightly so; for the precise quality of pledge is the segregation of property from the hotchpot, and the granting of credit to the debtor in reliance upon that very segregation.

There is hardly a pretense that the terms of Section 77 abrogate in terms this ancient and common-sense line. In fact, Section 77 by its terms carried the old line forward. No other sound construction can be given to Subdivision (n) of Section 77, providing that—

> * * * the jurisdiction and powers of the court * * * with respect to the debtor and his property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed.

The Congress might have undertaken to set up a different line of demarcation; but it elected in definite language to carry forward the interpreta-

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the respondents mainly rely involve either *unsecured* notes, which in commercial and legal parlance is not "collateral" (see this brief, *supra*, p. 14), or cases involving not injunctions, but questions of provability. In the latter category are *Hitner* v. *Diamond State Steel Co.* and *Dibert* v. *D'Arcy;* and *In re Battle Island Paper Co.* (discussed in this brief, *supra*, pp. 15–16). Only the last of these is a bankruptcy case.

(d) Thus, the respondents have failed to cite a *single* case, involving an injunction, which supports their contention on the issue involved. *Mississippi Valley Trust Company* v. *Railway Steel Spring Company*, 258 Fed. 346 (an *equity* case) (R. F. C. main brief, pp. 34, 43, 44) involved an injunction against the sale of the debtors' secured bonds.

tion worked out under the existing Bankruptcy Act, basing it upon the powers of the court over property held by a debtor who had voluntarily asked an adjudication, and had secured it. Nothing has yet been said indicating that a different rule was to be arrived at.

Nor, we believe, is respondents' case strengthened by an endeavor to confuse the issue by referring to cases in which, under the Bankruptcy Act prior to Section 77, courts had held that creditors who claimed segregation did not, in fact, have it. In the brief filed by the Refunding Committee (brief of Refunding Committee, pp. 26, 27) sixteen cases are cited as authority for the proposition that section 2 (15) has been applied in a wide variety of ways. Respondents carefully neglect to point out that in only two of these cases were injunctions against the sale of collateral involved. Of these, *In re Purkett, Douglas & Co.*, 50 F. (2d) 435, involved a temporary injunction pending determination of whether transfer to the pledgee was in violation of the usury laws. The case is direct support for the petitioners contention that where the pledgee has possession of the bonds under a valid pledge, the bankruptcy court has no jurisdiction over him. In the *Matthews* case the injunction was granted after the court had determined that the creditor in question did not hold collateral, but held a claim against the hotchpot, and was seeking not to retain something outside the debtor's property, but to seize and take over something

within the debtor's estate, or to seize and take over a claim primarily directed against the hotchpot of the debtor's estate. The distinction is aptly illustrated by the case of *Mississippi Valley Trust Company* v. *Railway Steel Spring Company*, 258 Fed. 346, 351, in which the court determined that under the law of Missouri an apparent pledgee was in fact a fiduciary of the pledged property for the debtor; and the case of *Allebach* v. *Thomas*, 16 Fed. (2d) 853, where a mortgagor, not in possession, sought by enforcing his mortgage, to withdraw property from the hotchpot. The other fourteen cases cited by respondent are so out of point as not to warrant serious consideration.[12]

The line between property within the immediate dominion of the debtor and property removed from it was, of course, in some instances difficult to draw. Under the Bankruptcy Act prior to 1933, whose provisions are so specifically carried forward in Section 77, courts had drawn a common-sense rule. Roughly, they dismissed mere

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[12] For the convenience of the Court the questions involved in the remaining fourteen cases may be grouped under the following brief headings:

(*a*) Injunctions against the commencement of judicial proceedings in other courts after the bankruptcy court has taken possession of the property; or against judicial proceedings begun in other courts within four (4) months of bankruptcy. *White* v. *Schloerb; In re Kletchka; Moorhouse* v. *Giant Powder Company; In re Swofford, etc., Co.; Mitchell Storebuilding* v. *Carroll; In re Donnelly; In re Hornstein.*

unsecured claims as "property" capable of being segregated from the hotchpot. Rightly so, for these claims meant nothing except as they represented an ultimate, distributive share in the hotchpot. Argument is made (brief for Refunding Committee, p. 34) that refusal to allow debtors to segregate *unsecured* claims opens a gate. The argument is based on no express power granted to the court by Section 77. It is further said that if the property segregated includes an obligation of the debtor, then it cannot be truly

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(*b*) Injunction preventing the removal of property from the jurisdiction of the court after bankruptcy. *In re Consumers, etc., Co.*

(*c*) Injunction against proceedings in a state court pending determination of the bankrupt's right to a discharge. *In re Nuttall; In re Van Buren.*

(*d*) Injunction to prevent a municipality from penalizing a bankrupt. *In re Hicks.*

(*e*) Injunction to prevent the working of a fraud through a legal technicality. *In re A. Musica & Son.*

(*f*) Cases involving the authority of a Bankruptcy Court to make rules in regulating practice before it (1) prohibiting trustees in bankruptcy to retain as their attorney the attorney of the bankrupt or for the petitioning creditors, unless specially authorized by the court, *Weil* v. *Neary;* or (2) limiting the time within which claims against the debtor's estate can be filed. *New York* v. *Irving Trust Co.*

In addition to these fourteen cases, respondents cite *In re Collier*, 4 F. Supp. 700, in which the court stayed a judgment creditor of a debtor under section 74 from prosecuting a suit in the state courts against an indemnity company, which had furnished an appeal bond to the debtor. The decision went upon the theory that the judgment debt was provable under section 74 and hence would be discharged by the confirmation of a plan of a proposed composition under the section.

segregated. The old line, of course, had definitely been drawn between secured obligations of the debtor as being capable of isolation, and unsecured obligations which were not. The theory behind that common-sense distinction is plain. The pledgee of an instrument which carries the obligation of a debtor, and which pledged obligation is otherwise secured, holds not merely the debtor's promise to pay, but also a tenancy in common in the security for that promise. This made the pledged obligation not only a *promise,* but a *thing;* and it was treated as a separate thing in the markets and in commerce.

It is argued (brief for Refunding Committee, p. 35) that perhaps the pledged obligation might be only colorably secured; what then? The case is put of a mortgage obligation for $20,000 resting on property having a value of $1,000, the mortgage being then pledged. It is sufficient answer to say that the courts may be trusted to deal with colorably secured obligations under pledge, as the court did, in a similar situation, in the case of *In re Purkett, Douglas & Co., supra;* no claim has been made in this case that the secured obligations of the debtor here pledged fall within that class.

And, of course, that argument simply does not apply to the bulk of the security pledged with the Reconstruction Finance Corporation, which are not obligations of the debtor, but obligations of other concerns, some solvent concerns, some operated separately, and all separate corporate entities.

A more realistic argument—indeed the only valid position—is taken by the trustees in bankruptcy. In their brief (page 9) they rest squarely on the theory that a railroad reorganization is peculiar; that all of the railroad creditors of any class and kind ought to be held in abeyance pending the existence of a plan; and that Section 77, construed in the light of the general railroad situation, ought to take in a vastly larger territory than that embraced in the previous bankruptcy sections. We can understand this position; it is logical. It is merely regrettable for the trustees' position that the statute not only did not embody that theory, but in terms negatived it. The trustees present a dream of what Congress might have done. They even suggest that perhaps it should have been done under the commerce clause of the Constitution, rather than under the bankruptcy clause (brief for trustees, page 8). It is debatable whether Congress ought to have done this; it is not open to question that they did not do so.

Lacking case law or statutory warrant, counsel for the Refunding Committee, in the principal argument, are reduced to the naked argument *ex necessitate*. It will be difficult, they say, to work up reorganization plans if there are large amounts of pledge creditors who can sell pledged obligations. This argument, of course, applies only to direct obligations of a debtor which are pledged for the debtor's own notes. Illogical extension of it is,

however, sought to include securities of other companies. Even if necessity could make law, the argument, taken at its face, without analysis, is not persuasive. For it is likewise urged that this case will be and must be a precedent to permit an injunction preventing the trustees under collateral trust deeds from selling the security pledged behind the debtor's outstanding collateral trust bonds. Indeed, this apparently is one of the chief objectives sought to be reached, by the Trustees in Bankruptcy, and by the Refunding Committee.

Yet collateral trust deeds securing obligations of a railroad are familiar; the Court will perhaps take judicial notice of the fact that they have been a usual medium of railroad financing for many years. Railroads have gone through receivership reorganization with such collateral trust issues outstanding, and never has injunction against the sale of the collateral been found necessary to effect a reorganization. The danger, therefore, that a plan cannot be worked up is not new; the assertion that it becomes impossible to draw a plan of reorganization is gratuitous. Plans have been drawn and made effective in similar circumstances without benefit of injunction;[13] nothing is alleged to

[13] For instance, in the last St. Paul reorganization a collateral trust issue of about $14,000,000 General Collateral Gold 6's of 1934, issued in 1924, and secured by $20,000,000 of the same debtor's General Mortgage Gold Series D 5's of 1989, was not foreclosed, but remained outstanding throughout the reorganization until paid at maturity. The plan of reor-

indicate a different situation in the instant reorganization proceeding.

The argument that the loans of the Reconstruction Finance Corporation, though originally short-term credit operations, have by force of circumstance become virtually long-term loans analogous to mortgage bonds which have no standing except as they are a claim on a hotchpot, is scarcely worthy of serious consideration. Changing circumstance cannot vary the direct word and agreement of the debtor to segregate certain collateral to the possession of Reconstruction Finance Corporation, coupled with actual segregation and permission in the note to Reconstruction Finance Corporation to sell that collateral without judicial proceedings. Because the agreement now becomes inconvenient, that clause of the notes executed by the debtor permitting sale should not be repudiated.

Respondents likewise would give no effect to the express provision of Section 5 of the Reconstruction Finance Corporation Act, empowering it to take over and liquidate collateral.[14]

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ganization did not alter the terms and conditions of the General Collateral Gold 6's, though some modification was made in the underlying collateral. This reorganization also illustrates the unreality of the Refunding committee's contention, since most of the St. Paul mortgages (as do those of the Rock Island) constituted liens not only on physical properties, but also on various stocks and bonds.

[14] The Refunding Committee has entirely misconstrued (its brief, p. 48) the position set out in our main brief (main brief of Reconstruction Finance Corporation, pages 65–69)

We revert to the terms of Section 77. It drew the old line in carrying forward by subdivision (n), the familiar distinction between property within and property without the dominion of the debtor—the distinction which Judge Learned Hand so clearly drew in the *Hudson River Navigation* case (57 F. (2d) 175). It did more. It delimited the power of the court. In Subdivision (1) is granted power to the court to stay a judicial proceeding to enforce a lien. Rightly, the respondents urge that this deals only with legal proceedings. It would be more to the point if attention could be called (it

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in regard to this provision. We there contended (as we here reassert) that the statutory provision in question contained in Section 5 must be construed in *pari materia* with the provisions of Section 77; and that the derivation of power to grant the injunction from the so-called "Omnibus Clause" of the Bankruptcy Act, couched in *general* language, should not prevail over a power *expressly* granted by the Congress to the Reconstruction Finance Corporation. Obiously the illustration used by the Refunding Committee, the foreclosure of a mortgage by Reconstruction Finance Corporation, requiring judicial proceedings, which the District Court has *express* power to stay under Section 77, is not apposite. Likewise, we freely concede that exercise of the statutory power by Reconstruction Finance Corporation would be subject to all the requirements of due process and review thereof by the courts. Furthermore, it would seem that the provision in question in Section 5 of the Reconstruction Finance Corporation Act cannot lightly be dismissed as a mere incidental charter power without reference to the design of the Congress, viz., the protection of public funds. It is absurd to analogize the powers of the Reconstruction Finance Corporation, a government instrumentality, with those of other than strictly governmental agencies.

cannot be) to a grant of power to interfere with the *jus disponendi* of a holder of segregated property. And nowhere is there any suggestion contained in the statute that the familiar provisions of Section 67 (d) of the Bankruptcy Act protecting liens given in good faith, or of 57 (h) under which pledgees are protected in their right of sale, have been overridden.

III

LACKING THE PREMISE THAT PLEDGED PROPERTY IS NOW WITHIN THE ESTATE OF THE DEBTOR, THE ORDER WAS IMPROPER EITHER IN SUMMARY OR PLENARY PROCEEDINGS.

First. The failure to show inclusion of segregated property in the debtor's estate disposes of the contention that an injunction can be summarily made.

Summary proceedings, as we understand them, are allowed to prevent interference with the debtor's estate. Thus, they are resorted to to prevent legal proceedings which would withdraw property from the hotchpot; or which would multiply claims against the hotchpot; or which would permit determination of claims in a court other than the bankruptcy court.

But it is quite one thing to say that a court may summarily protect its own property (*Cf. Isaacs* v. *Hobbs Tie & Timber Co.*, 282 U. S. 734); it is quite another to say that it may summarily reach out and possess itself of property in the immediate dominion of others (*Cf. Straton* v. *New*, 283 U. S. 318). In the first case, the summary order acts

as a shield. In the second, it would be a sword. The Refunding Committee substantially admits that the summary order in the case at bar is a sword by stating that if the injunction is upheld, when and if the collateral is sold, effect will have to be given to it "in a very different way" than if it is retained (brief of Refunding Committee, p. 12). Naturally, the Refunding Committee would prefer that pledged creditors should sink to the status of claimants against the hotchpot; that is to say, of unsecured creditors; or at least of creditors the nature and priority of whose claim on the hotchpot is no longer determined by the agreement but is to be determined by someone else.

The instant proceeding cannot be viewed other than as a genuine attempt to alter the right of the petitioner, in contravention not only of its contract, but of its physical dominion. As such it is a litigation [15] between adverse parties.[16] The fail-

[15] The respondents advance a somewhat unique theory of litigation: that this is not a "dispute between private litigants" and that respondents are merely unholding the hands of the Federal District Court in its effort to administer a reorganization proceeding. Incidentally, this suggestion is urged most vigorously by the committees representing junior bond issues rather than by the General Mortgage Committee whose position in the reorganization is relatively secure, whatever the outcome of this litigation. If respondents are not acting as adversaries in the case at bar their participation can be justified only on the ground that they are functioning as *amicus curiae*. This argument, however, is not available, since the Refunding Committee has taken upon itself the management of the instant cause. It is ele-

ure of the Refunding Committee to grasp the true nature of the proceeding is shown by its failure to observe the difference in position of a mortgagee

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mentary that such a course is not open to *amicis curiae*. See *In re Columbia Real Estate Co.*, 101 Fed. 965, 970 (1900); *Birmingham Loan & Auction Co.* v. *First Nat. Bank of Anniston*, 100 Ala. 243, 13 S. 945, 946 (1893); *Martin* v. *Tapley*, 119 Mass. 116, 120 (1875); *Taft* v. *Northern Transportation Company*, 56 N. H. 414, 416 (1876); *In re Pina's Estate*, 112 Cal. 14, 44 Pac. 332, 333 (1896); *Parker* v. *State*, 133 Ind. 178, 33 N. E. 119, 122 (1892).

That the District Court recognized the adverse economic interests (R. 40, 42) of respondents in this case is clearly evidenced by the fact that its injunctional order was predicated upon the precise contentions advanced by the affidavit presented in behalf of this Refunding Committee. Moreover, if the District Court had not considered the issues presented by respondents' affidavit to be such as to involve a "case or controversy", it would not have invoked its judicial power for the purpose of issuing the injunctional order. (See, Hughes, Federal Practice, Jurisdiction and Procedure (1931) sec. 242). Even if respondents' disingenuous contention that they are not adversaries could be sustained, the argument that a court of bankruptcy, prior to the presentation of a reorganization plan, may perform administrative duties, comparable to such instrumentalities as the Interstate Commerce Commission or the Federal Trade Commission, is constitutionally fatal. For the assumption of such duties by a judicial organ is in direct conflict with the well-established doctrine that constitutional courts, created under art. 3 of the Constitution, may not perform functions which are purely administrative or legislative in character. See *Hayburn's* case, 2 Dall. 409 (U. S. 1792); *United States* v. *Ferreira*, 13 How. 40 (U. S. 1851); *Gordon* v. *United States*, 2 Wall. 561 (U. S. 1864); *Keller* v. *Potomac Electric Power Co.*, 261 U. S. 428 (1922); *Postum Cereal Co.* v. *California Fig Nut Co.*, 272 U. S. 693 (1927); *Butterworth* v. *Hoe*, 112 U. S. 50 (1884); *Federal Radio Commissioner* v. *General Electric Co.*, 281 U. S. 464 (1930); *In re Canada No. Ry.* v.

who has a lien which he may assert later, from that of a pledgee who holds property which he has already withdrawn. It also appears from the contention that the injunction is necessary to the continued operation of the debtor's estate (brief of the Trustees, p. 6).

International Bridge Co., 7 Fed. 653 (N. D. N. Y. 1880), 8 Fed. 190 (N. D. N. Y. 1881). See also *Tutun* v. *United States*, 270 U. S. 568, 576 (1926). *Contra: Harrison* v. *Moneravie*, 264 Fed. 776 (C. C. A. 8th, 1920). See also *Wallace* v. *Adams*, 204 U. S. 415, 423 (1907); and Katz, Federal Legislative Courts (1930), 43 Harv. L. Rev. 894).

[16] A bankruptcy court has no summary jurisdiction with respect to rights asserted by adverse claimants. *Mueller* v. *Nugent*, 184 U. S. 1, 15; *Louisville Trust Co.* v. *Comingor*, 184 U. S. 18, 24; *Jacquith* v. *Rowley*, 188 U. S. 620, 623; *Schweer* v. *Brown*, 195 U. S. 171, 172; *Galbraith* v. *Vallely*, 256 U. S. 46, 48; *Taubel*, etc. *Co.* v. *Fox*, 264 U. S. 426, 433; *May* v. *Henderson*, 268 U. S. 111, 115. Thus, in *Harrison* v. *Chamberlin*, 271 U. S. 191, this Court said (p. 193):

"It is well settled that a court of bankruptcy is without jurisdiction to adjudicate in a summary proceeding a controversy in reference to property held adversely to the bankrupt estate, without the consent of the adverse claimant; but resort must be had by the trustee to a plenary suit."

In a plenary proceeding the necessary allegations for the issuance of an injunction must be made out in the petition for the injunction, and omissions may not be supplied by a supporting affidavit. *Missouri Pacific R. R. Co.* v. *Norwood*, 283 U. S. 249, and other cases cited in our main brief (pp. 25–27). The Refunding Committee (brief of Refunding Committee, pp. 52–54) has entirely misconstrued the position taken in our main brief (pp. 25–27). The point we made was that a plenary proceeding was necessary against the banks and the Reconstruction Finance Corporation, and in such a proceeding, omissions from the debtor's petition (R. 37) could not be supplied by a supporting affidavit.

Change of claims upon the property in possession of the debtor, occasioned by the fact that secured obligations of the debtor are pledged underneath these loans, will not change the physical status; will not disrupt the railroad; will not, in fact, alter any physical assets within the possession of the court or of the trustees in bankruptcy.

Second. Upon analysis, the alleged power of the court to make the order even in plenary proceedings breaks down. There is a great gulf fixed between power to enforce a right which the debtor or his estate may have to possession, in order that property belonging to the hotchpot may be recovered for it; and power to alter the right of a creditor to maintain property free of the hotchpot. Even the respondents do not suggest that property has been wrongfully removed from the hotchpot which should be replaced in it. They seek to achieve the same result, it is true, by immobilizing that property so that the pledged creditors can do nothing with it. This is merely a negative method of securing a positive result. The right to dispose of property is the highest right connected with it; delete that right, and in substance the property has been tied to the debtor's estate.

Contrast this with the care which courts have used in analogous situations. In *Allebach* v. *Thomas,* 16 F. (2d) 853, the court restrained a mortgagee from foreclosing in a State court; but it did so on the express ground that he had an equally efficient and adequate remedy in the bank-

ruptcy court itself; the forum had been changed, but not the right.

During an emergency a state statute may postpone the exercise of a remedy such as the right to foreclose judicially, provided there is protection of the creditor's right to receive interest (*Home Building and Loan Association* v. *Blaisdell,* 290 U. S. 398). It is conceivable that a statute *might* have been drawn treating the right of a pledgee to sell as the equivalent of a foreclosure, and working out some method of postponing this self-help remedy. It is sufficient to say that here no such statute *was* drawn; and the drastic nature of such a statute and the difficulty of sustaining it, when enacted, is perhaps reason enough why this court should not be asked to construct it out of vague suggestions *ex necessitate.*

IV

SECTION 77 IS AN INTEGRAL PART OF THE BANKRUPTCY ACT AND THERE IS NO JUSTIFICATION FOR RESPONDENTS' ATTEMPT TO IGNORE OTHER APPLICABLE SECTIONS.

The respondents insist, with different degrees of emphasis, that various express provisions of Section 77 do not apply to proceedings under Section 77.

The provisions for reorganization contained in Section 77 are an elaboration of the "composition" section,[17] familiar to American bankruptcy pro-

[17] C. 390, 18 Stat. 183. See *Wilmot* v. *Mudge* (1880), 103 U. S. 217; *Canada Southern Railway Company* v. *Gebhard,* 109 U. S. 527 (1883); Dunscomb, S. W., *Bankruptcy: A Study in Comparative Legislation* (1893) at 147–148.

cedure since 1874. The attempt on the part of counsel for the trustees to separate Section 77 from the Bankruptcy Act is reminiscent of similar efforts on the part of counsel before this Court in connection with the composition section of the Bankruptcy Act of 1874. In the case of *Wilmot* v. *Mudge,* 103 U. S. 217, Mr. Justice Miller, speaking for the Court, had occasion to discuss counsel's contention that the composition section was not a part of the proceedings under the then Bankruptcy law (p. 219):

> Next, it is said that the 17th section of the Act of 1874, which provides for this composition, is not *in pari materia* with the bankrupt law, and is a new and independent mode of distributing the bankrupt's assets, and releasing him from his debt, and is not a part of the proceedings under the bankrupt law.
>
> We do not understand that there is any power in the debtor to invoke this remedy until proceedings in bankruptcy have been commenced by him or against him under the bankrupt law.
>
> Nor can the District Court make the necessary order establishing the composition, except in a case of regular bankruptcy proceedings, either voluntary or involuntary. The composition proceeding is, therefore, a part of the proceedings in bankruptcy, and is one of the modes, which the bankrupt law authorizes, of releasing the debtor and securing to his creditors an equal share of his means.

> The section itself is one of many amending the bankrupt law in numerous particulars, and is declared to be an amendment of section 43 of the original Act of 1867.
>
> We are very clear, therefore, that the provision for composition is a proceeding in bankruptcy under the Bankrupt Act, whether reference be had to the language of the Act of 1867 or of the Revised Statutes, that debts created by fraud shall not be discharged under it. See opinion of Chief Justice Waite, In re *Holmes & Lissberger,* 15 Blatchf. 170.

The same problem was again brought before this Court in the case of *Cumberland Glass Co.* v. *De Witt,* 237 U. S. 447, in connection with the Act of 1898, where Mr. Justice Day, speaking for the Court, said (p. 453):

> * * * the composition proceedings arise from the bankruptcy proceedings, and this part of the statute is to be construed with the entire act. *Wilmot* v. *Mudge,* 103 U. S. 217.

By an amendment to the Bankruptcy Act in 1910,[18] it was provided that a bankrupt might offer terms of composition either before or after adjudication. Thus, prior to the recent amendments to the Bankruptcy Act, for twenty-five years a corporation (not otherwise barred by Section 4 of the Act) has been privileged to avail itself of

[18] C. 541, Section 12, 30 Stat. 549; C. 412, Section 5, 36 Stat. 839.

the composition sections and procure assistance from the bankruptcy court in effecting a settlement with creditors providing that the corporation would concede its insolvency.

Since the decision in *Wilmot* v. *Mudge, supra,* the proposition that compositions are proceedings in bankruptcy under the Bankruptcy Act and are to be construed in *pari materia* with the entire Act has never been questioned. Therefore, *a fortiori,* it is indisputable that Section 77 must be construed in *pari materia* with the entire Act,[19] and

[19] The rule of statutory construction applied by this Court in the *Wilmot* case, *supra*, leaves no doubt as to the soundness of this premise. We quote Mr. Justice Miller's language (p. 220):

"The rules of construing statutes in like cases with the present are so well understood as to require no citation of authorities.

"They are, first, that effect shall be given to all the words of a statute, where this is possible without a conflict; and, second, that as regards statutes in *pari materia* of different dates, the last shall repeal the first only when there are express terms of repeal, or where the implication of repeal is a necessary one. When repeal by implication is relied on, it must be impossible for both provisions under consideration to stand because one necessarily destroys the other. If both can stand by any reasonable construction, that construction must be adopted." In the October 1933 term, this Court again reaffirmed this long-standing judicial construction in the case of *Manhattan Properties* v. *Irving Trust Co.*, 291 U. S. 320. To the argument urged on the Court that the established rule with respect to the provability of claims under Section 63 (a) of the Bankruptcy Act had been changed by the sections added to the Act in 1933, Mr. Justice Roberts, speaking for the Court, replied (p 336):

this would be equally true, were there no such express provision as is set forth in subdivision (n) of Section 77.

V

ANALOGY IN ENGLISH REORGANIZATION PROCEDURE

The respondents assert that the injunctional order was "necessary." It may be illuminating, therefore, to examine respondents' theory of *ex necessitate* against the background of English reorganization procedure.

Since 1867 it has been the statutory policy of the Parliament to provide reorganization facilities for embarrassed and insolvent railway companies through machinery substantially similar to Section 77.[20] Under the provisions of the Railway Company's Act, the court is specifically empowered to stay litigation, such as creditors' suits or executions.[21] But this "unusual and extraordinary"

"In this situation (only compelling language in the statute itself would warrant the rejection of a construction so long and so generally accepted). *Maynard* v. *Elliott*, *supra* (283 U. S. 277, 75 L. ed. 1031, 51 S. Ct. 390, 17 Am. Bankr. Rep. (N. S.) 501). If the rule is to be changed, Congress should so declare."

[20] See, for statutory provisions, *Railway Companies Act, 1867*, 30 & 31 Vict. c. 127; 23 Halsbury's Laws of England (ed. 1912), 768–771. It is to be noted that the plan or "scheme" is filed simultaneously with the company's declaration that it "is unable to meet its engagements with its creditors." Ibid. Section 6.

[21] Ibid. Sections 7 and 9. But c. Point II, main brief, pp. 55–60.

power may be resorted to "only for the period between the filing and enrollment of the scheme." [22] In other words, the purpose underlying the English Act is to protect the assets of a company in the interval *after* a plan has been filed with the court and *until* the requisite assents have been obtained.[23] Thus, in the absence of a plan of reorganization, as in the case at bar, the English courts would not, in the first place, be empowered to grant an injunction and, secondly, would dismiss arguments such as learned counsel for respondents have advance in behalf of the injunction as academic. Moreover, under the English procedure even after a plan has been filed an injunction will not be granted, if in the judgment of the court, the plan would not "afford a reasonable prospect of providing for the payment of the claims of the creditors and thus *compensate them for a temporary suspension of their remedies.*" [24] However, on the novel theory which has been advanced by the several respondents, not only may valid claims of

[22] See *In re Potteries, Shrewsbury, and North Wales Railway Company*, 5 Ch. App. 67, 71 (1869).

[23] Sir G. M. Gifford, L. J., in *In re Potteries, Shrewsbury, and North Wales Railway Company, op. cit. supra note 22*, at 72: "I am convinced that this power was only given to the Court to enable the company to protect its property pending the scheme, if there was a reasonable expectation of obtaining the requisite assents."

[24] *In re Cambrian Railway Company's Scheme*, 3 Ch. App. 278 (1868), at 299, italics supplied.

pledge creditors be "suspended" indefinitely, but a court of bankruptcy need not even determine, when granting an injunction, whether or not a plan will adequately "compensate them [pledge creditors] for a temporary suspension of their remedies." Indeed, in Section 77 proceedings, on respondents' theory, a reorganization plan need never be presented;[25] having filed a petition, the debtor, "within the sheltering haven of an injunction, may simply wait—this at the expense of the creditor."[26] If it is to be the law of the land that the filing of a petition for reorganization, Section 77 "freezes" (see, especially, Trustee's brief, p. 9; Refunding Committee brief, pp. 9–17) the contract rights of creditors to dispose, pursuant to the terms of a pledge contract, of pledged collateral validly in their possession, then it is respectfully submitted that such a rule of law should not be laid down by this Court but only by the Congress.

In reply to respondents' suggestion that the petitioners have an equally efficient and adequate

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[25] See main brief, Point V, pp. 101–102.

[26] See our main brief, Point IV, p. 97 *et seq.* *Cf.* Hough, J., dissenting in *Manhattan Rubber Mfg. Co.* v. *Lucey Mfg. Co.*, 5 F. (2d) 39, where the expression is used of a debtor's "sitting under the Chancellor's umbrella and watching the weather outside."

remedy (see *Allebach* v. *Thomas*, 16 F. 2d, 853, 855), may we suggest that Section 77 is an experimental statute. From the slow rate of progress made thereunder (see main brief of Reconstruction Finance Corporation, pp. 102–104, footnote 40), it remains to be seen whether it will prove a workable statute and an effective instrument for accomplishing the end for which it was designed, the reorganization of railroad corporations. The Federal Coordinator of Transportation has recently called attention to the fact that the Act contains "defects and deficiencies." He has further said, referring to Section 77: "That statute plowed new ground and, as might have been anticipated, its authors did not foresee all the difficulties and perplexities which would be encountered in its actual operation." [27]

Under the composition section of the Bankruptcy Act (Section 12),[28] which is the prototype of Section 77, few, if any, corporations of importance have been reorganized. So far as we have been able to discover in all the years that a composition provision has been a part of the Bankruptcy Act, no case has even arisen involving an injunction against the sale of pledged collateral.

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[27] I Report of Federal Coordinator of Transportation on Transportation Legislation (1935), 57.

[28] Under this section a composition cannot be confirmed until after the plan has been accepted by "a majority in number of all creditors whose claims have been allowed."

The suggestion that the petitioners have "an equally efficient and adequate remedy" by the provision for a plan of reorganization in Section 77, and that pending the final effectuation of such a plan they may be indefinitely stayed from enforcing their contract rights, is warranted by nothing expressly in Section 77 itself and is, furthermore, unrelated to realities.

VI

ECONOMIC CONSIDERATIONS.

We took occasion to observe in our main brief (R. F. C. brief, pp. 71–73), that the effect of the injunctional order would be virtually to immobilize in the control of a corporate debtor all its holdings even though pledged and subject to the right of sale, and would perpetuate indefinitely the control of the debtor corporation. Apparently, counsel for the Refunding Committee are not inclined seriously to dispute this view, but rather urge it as an economic consideration for upholding the ruling of the District Court and of the Circuit Court of Appeals.

Somewhat naively it is suggested that the policy of the Government has been in the direction of railroad consolidations (brief of Refunding Committee, p. 69). Assuming that this is true (if it is so, it has been honored more in the breach than in the observance), the policy of the Government has never been one of sanctifying consolidations or con-

centrations in the railroad field *merely because they happen to exist.* To the contrary, the railroad administrative policy has occupied itself as much with breaking up uneconomic, senseless or monopolistic combinations as in the holding together loose aggregations born of stock purchases or other casual acquisitions.[29] Even when such aggregations are tied to the principal railroad through the mechanism of collateral trust issues, there has been no indication that the policy of the Government was to perpetuate them indefinitely. This argument, for example, might lead to the forced protection (under the provisions of Sec. 77–B) of the entire so-called Van Sweringgen system, held through a series of holding companies dominated by the Allegheny Corporation.

Nothing could show more clearly the evil of the situation than the argument of the Refunding Committee. This explains their inability to preserve the distinction between pledges of property not connected with the debtor, pledges of securities owned by the debtor but which are not debtor's obligations, and pledges of obligations of the debtor secured by liens or claims on other property; and the reason why they are anxious to prevent any rearrangement which might occur should collateral

[29] For instance: the divorce of the Pennsylvania Railroad from the Wabash; the New York, New Haven & Hartford R. R. from the Boston & Maine R. R., etc.

trust bondholders ask their trustees to assert the right of sale.

Actually respondents' fears are financial rather than for the integrity of railroads. A railroad need hardly fear that its system will be broken up in an unwarranted way, even though stock of a constituent subsidiary might be sold. If the property of that subsidiary belongs in that system, its greatest value lies there. If it can be easily divorced from the system, or made more valuable by integrating it into another system, that very fact raises the question as to whether the divorce should not be seriously considered. In any case, the Interstate Commerce Commission now has jurisdiction to permit or forbid acquisition of control by other railroad interests.[30] Divorce without reintegration either in the principal system or some similar system is unthinkable. The property thus lopped off would at once lose value, no matter how strategic its location, how heavy the density of the traffic it carries, or how important to the transportation line it may be.

The judgments of the Circuit Court of Appeals should be reversed and the causes remanded to the District Court with instructions to vacate the injunctional order (R. 104), and so much of the

[30] The Interstate Commerce Act, U. S. C., Title 49, Sec. 5 (6).

order (R. 7) approving the debtor's petition under Section 77 as denies to this petitioner the right to dispose of the pledged collateral pursuant to the terms of the debtor's notes held by it.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.
STANLEY REED,
General Counsel,
Reconstruction Finance Corporation.
A. A. BERLE, JR.,
Special Counsel,
Reconstruction Finance Corporation.
C. M. CLAY,
Counsel,
Reconstruction Finance Corporation.

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13

SUPREME COURT OF THE UNITED STATES.

Nos. 479 to 490, inclusive.—October Term, 1934.

Continental Illinois National Bank & Trust Co. of Chicago, Petitioner,
479-480 *vs.*
The Chicago, Rock Island & Pacific Railway Co., et al.

The Chase National Bank of the City of New York, Petitioner,
481-482 *vs.*
The Chicago, Rock Island & Pacific Railway Co., et al.

Mississippi Valley Trust Company, Petitioner,
483-484 *vs.*
The Chicago, Rock Island & Pacific Railway Co., et al.

Harris Trust and Savings Bank, Petitioner,
485-486 *vs.*
The Chicago, Rock Island & Pacific Railway Co., et al.

The New York Trust Company, Petitioner,
487-488 *vs.*
The Chicago, Rock Island & Pacific Railway Co., et al.

Reconstruction Finance Corporation, Petitioner,
489-490 *vs.*
The Chicago, Rock Island & Pacific Railway Co., et al.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[April 1, 1935.]

Mr. Justice Sutherland delivered the opinion of the Court.

On June 7, 1933, The Chicago, Rock Island & Pacific Railway Co. filed a petition seeking a reorganization under § 77 of the Bankruptcy Act, in the federal District Court for the Northern District of Illinois, Eastern Division, alleging that it was "unable to meet its debts as they mature." Nine of the debtor's subsidiaries there-

after joined in the proceedings as permitted by subdivision (a) of the section. On September 26, 1933, the debtor filed a petition for instructions which alleged that it had outstanding collateral notes secured by mortgage bonds, part of which were issued by it, part by corporations forming a part of the system; that it had been unable to pay interest on its funded debt secured by mortgage liens on various portions of its property; that it would be obliged to default on interest about to become due on other mortgage bonds of the system; that the value of the collateral securing each of the outstanding notes is substantially in excess of the loan thereby secured; that if holders of the notes should sell the collateral it would cause a substantial and irreparable loss to the trust estate; and that a forced sale of the collateral at the present time might result in a substantial deficiency judgment against the debtor and the depletion of the respective interests in the trust estate of all creditors in proportion to the rank and lien of the obligations by which their claims or interests therein are evidenced. The petition prayed that the court determine whether it should enjoin the holders of the collateral notes, in the event of a default, from selling any of the collateral.

Practically all of the collateral held by the banks and the Reconstruction Finance Corporation consists of bonds of the debtor and its subsidiaries. These bonds are secured by mortgages on the property of the system; and the collateral, therefore, constitutes fractional interests in the liens created thereby. The collateral pledged to the banks consists of bonds of the Rock Island or of bonds (guaranteed by the debtor) of one of the subsidiary corporations, wholly owned and operated under lease by the debtor. Six of the collateral notes, aggregating $13,659,877.58, are held by the Reconstruction Finance Corporation and are secured by collateral of the face value of $41,702,465.85.[1] The remaining notes, aggre-

[1]The collateral pledged with the notes held by the Reconstruction Finance Corporation consists of the following securities:

Listed Collateral:	
The Chicago, Rock Island and Pacific Railway Company First and Refunding 4% Gold Bonds	$7,575,000.00
St. Paul and Kansas City Short Line Railroad Company First Mortgage 4½% Gold Bonds	9,374,500.00
Rock Island, Arkansas and Louisiana Railroad Company First Mortgage 4½% Gold Bonds	3,862,000.00
Total	$20,811,500.00

gating $4,125,000 in amount, and secured by collateral of the face value of $14,409,000,[2] are held severally by five banks—The Chase National Bank and the New York Trust Company, of New York City, the Continental Illinois National Bank and Trust Company and Harris Trust and Savings Bank, of Chicago, and Mississippi

Unlisted Collateral:	
The Chicago, Rock Island and Gulf Railway Company Extension First Mortgage 5% Bonds	$6,927,000.00
The Chicago, Rock Island and Gulf Railway Company Carrollton Branch 6% Bonds	331,000.00
Kankakee & Senaca Railroad Company 4½% Bonds	352,000.00
Rock Island & Dardanelle Railway Company First Mortgage 5% Bonds	100,000.00
Rock Island Memphis Terminal Depot First Mortgage 5% Bonds	900,000.00
Rock Island Memphis Terminal First Mortgage 5% Bonds	400,000.00
Rock Island Omaha Terminal First Mortgage 5% Bonds	906,000.00
Rock Island Improvement Company:	
Blue Island Shops Bonds	199,000.00
Cedar Rapids Terminal Bonds	369,732.99
Little Rock Mortgage Bonds	278,492.49
Peoria Terminal Mortgage Bonds	290,247.86
First and Collateral 5% Bonds	3,310,000.00
Trinity & Brazos Valley Receiver's Certificates	747,492.51
Trinity & Brazos Valley First Mortgage Bonds (now pledged under Colorado & Southern Mortgage; C. R. I. & P. has agreed to pledge them with Reconstruction Finance Corporation upon release from that Mortgage May 1, 1935)	4,380,000.00
Total	$19,490,965.85
Assignment of Chicago, Rock Island and Pacific Railway Company's distributive share in assets of Railroad Credit Corporation, approximately	1,400,000.00

[2]The notes held by the five banks and the collateral securing the same are as follows:

		COLLATERAL	
	Amount of Loan	*C. R. I. & P. Refunding 4% Bonds*	*St. Paul & Kansas City Short Line 4½% Gold Bonds*
Chase National Bank	$2,000,000	3,253,000	3,956,000
Continental Illinois Bank and Trust Co.	1,250,000	1,307,000	2,758,000
New York Trust Co.	500,000	800,000	1,010,000
Harris Trust & Savings Bank	250,000	405,000	490,000
Mississippi Valley Trust Company	125,000	190,000	240,000
	$4,125,000	$5,955,000	$8,454,000

The $4,125,000 was reduced to $3,866,923.34 by application of Debtors' deposits in the Continental and Mississippi Valley banks.

The St. Paul and Kansas City Short Line 4½% Gold Bonds are mortgage bonds of a corporation whose capital stock is owned by the Debtor; and they are guaranteed principal and interest by it.

Valley Trust Company, of St. Louis. Each of the collateral notes contains a provision that it shall become due in case of, among other events, (1) non-payment of interest, (2) insolvency of the debtor, (3) appointment of a receiver for the debtor. Each note held by a bank provides also that it shall become due in case of non-payment of interest on any of the notes held by the Reconstruction Finance Corporation. And all the outstanding notes provide that:

"Upon default of any kind hereunder, the payee may sell in . . . New York City, or elsewhere . . . all or any of the security held for the payment of this note, at any broker's board or at public or private sale, without . . . notice . . . And the payee may be the purchaser of any or all property, rights and/or interests so sold . . . ."

None of the noteholders was a party to the proceeding. No noteholder was ever served with process; and only the two Chicago banks were residents of the district. But notice of the intention to present the petition for instructions had been sent by registered mail to each of the noteholders, and also to the five protective committees representing security holders of the system.[3] All of these parties were represented at the hearing. The holders of the collateral notes appeared specially, and objected to the jurisdiction of the court on the ground that (1) it had no jurisdiction of the person; (2) no jurisdiction over, or possession of, the property, the sale of which was about to be restrained; and (3) no jurisdiction to grant in a summary proceeding the injunction suggested; but it was stipulated that the noteholders might present argument and file briefs on the merits without waiving their special appearances. The Chairman of the Protective Committee of the First and Refunding Bonds of the Debtor, set forth the facts relied upon as showing that unless the sale of the collateral was enjoined, it would be impossible to prepare, and secure approval of, a plan of reorganization. All of the appellants contend that the injunction

[3]Protective Committee for The Chicago, Rock Island & Pacific Railway General Mortgage 4% Bonds; Protective Committee for The Chicago, Rock Island & Pacific Railway First and Refunding 4% Gold Bonds and Secured 4½% Gold Bonds Series A; Protective Committee for the St. Paul & Kansas City Short Line 4½% Gold Bonds and Rock Island, Arkansas and Louisiana 4½% Gold Bonds; Protective Committee of the Burlington, Cedar Rapids and Northern Consolidated 5% Gold Bonds; Protective Committee for the Chicago, Rock Island & Pacific Railway, 30-year 4½% Convertible Bonds.

entered, as hereinafter stated, was without legal justification. Only the banks renew here the challenge to the jurisdiction of the court to make the order in this proceeding.

The Chicago, Rock Island and Pacific system comprises over 8,000 miles of line, extending into more than one-fourth of the states of the Union, and into 20 federal judicial districts. At the commencement of this reorganization proceeding, its capitalization outstanding in the hands of the public was $459,059,808. Of this, $128,909,211 was in preferred and common stocks; $312,365,720 in bonded indebtedness; and $17,784,877 in the collateral notes here in question. In addition to the above, there were pledged as security for some issues of its funded debt bonds and stocks of the system aggregating $145,749,050; and as security for the collateral notes, the bonds and stocks above mentioned, aggregating $54,711,465. If, pending the reorganization, trustees for the bondholders and these noteholders should sell the pledged securities, the capitalization outstanding in the hands of the public would to that extent be expanded; and the aggregate capitalization might thereby become as much as $659,520,323.

By the Act of March 3, 1933, c. 204, 47 Stat. 1467, original jurisdiction, in addition to that theretofore exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, was conferred upon courts of bankruptcy "in proceedings for the relief of debtors", as provided in §§ 74, 75 and 77 of the act. We are here concerned only with § 77. That section contains provisions for the reorganization of railroads engaged in interstate commerce. It permits any railroad corporation which is insolvent or unable to meet its debts as they mature to effect a plan of reorganization.

It provides for the filing of a petition by the railroad corporation in a court designated by the act. If the petition be approved, the court, during the pendency of the proceedings, is given exclusive jurisdiction of the debtor and its property wherever located. The act requires that the railroad corporation shall be referred to in the proceedings as a "debtor", and permits any corporation, the majority of the capital stock of which is owned, or substantially all of whose properties are operated, by the debtor under lease or operating agreement, also to file a petition in the same proceeding stating that it is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization in connection with the plan of the original debtor.

Other provisions of the section direct that a plan of reorganization shall include a proposal to modify or alter the rights of creditors generally or of any class of them, secured or unsecured, either through the issuance of new securities or otherwise; that it shall provide adequate means for its execution; that the term "creditor" includes "all holders of claims, interests, or securities of whatever character against the debtor or its property"; and that, if the plan is not proposed or accepted or confirmed within a reasonable time to be fixed by the judge, he may dismiss the proceeding.

Before acceptance of any plan, the Interstate Commerce Commission is directed to hold a public hearing, following which it shall render a report recommending a plan which "will, in its opinion, be equitable, will not discriminate unfairly in favor of any class of creditors or stockholders, will be financially advisable . . . and will be compatible with the public interest." The commission is required to state fully the reasons for its conclusions. The plan is then to be submitted to the creditors and stockholders of the debtor for acceptance or rejection. No plan may be finally approved by the commission until it has been accepted in writing by or on behalf of creditors holding two-thirds in amount of the claims of each class affected by the plan, and by or on behalf of stockholders holding two-thirds of the stock of each class.

Upon approval by the commission, the judge, after hearing, shall confirm the plan if satisfied, among other things, that the plan affords adequate protection for the realization by creditors of the value of their securities, liens and claims in one of the ways pointed out by the section. Upon confirmation of the plan, it is to be binding not only upon corporation and all stockholders and creditors generally, but upon all secured creditors of each class of which two-thirds in amount shall have accepted the plan. For convenient reference, various pertinent excerpts from § 77 are reproduced in the margin.[4]

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[4](a) Any railroad corporation may file a petition stating that the railroad corporation is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization. The petition shall be filed with the court in whose territorial jurisdiction the railroad corporation, during the preceding six months or the greater portion thereof, has had its principal executive or operating office, and a copy of the petition shall at the same time be filed with the Interstate Commerce Commission hereinafter called the commission: . . . If the petition is so approved, the court in which such order approving the petition is entered shall, during the pendency of the proceedings

On November 22, 1933, the district court, after a hearing, entered an order reciting that each of the collateral notes contained provisions that, in case of the insolvency of the railway company or the appointment of a receiver or the non-payment of interest when due, the holder thereof might sell and dispose of the collateral; that there was danger that the holders would claim that one or more of

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under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located. The railroad corporation shall be referred to in the proceedings as a "debtor". Any corporation, the majority of the capital stock of which having power to vote for the election of directors is owned, either directly or indirectly through an intervening medium, by any railroad corporation filing a petition as a debtor under this section, or substantially all of whose properties are operated by such a debtor under lease or operating agreement may file, with the court in which such other debtor had filed such a petition, and in the proceeding upon such petition under this section, a petition stating that it is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization in connection with, or as a part of, the plan of reorganization of such other debtor; and thereupon such court shall have the same jurisdiction with respect to it, its property and its creditors and stockholders as the court has with respect to such other debtor. . . .

(b) A plan of reorganization within the meaning of this section (1) shall include a proposal to modify or alter the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; . . . (3) shall provide adequate means for the execution of the plan, which may, so far as may be consistent with the provisions of sections 1 and 5 of the Interstate Commerce Act as amended, include the transfer or conveyance of all or any part of the property of the debtor to another corporation or to other corporations or the consolidation of the properties of the debtor with those of another railroad corporation, or the merger of the debtor with any other railroad corporation and the issuance of securities of either the debtor or any such corporation or corporations, for cash, or in exchange for existing securities, or in satisfaction of claims or rights, or for other appropriate purposes; . . . The term "creditors" shall, except as otherwise specifically provided in this section, include, for all purposes of this section and of the reorganization plan, its acceptance and confirmation, all holders of claims, interests, or securities of whatever character against the debtor or its property, . . .

(c) Upon approving the petition as properly filed the judge . . . (7) if a plan of reorganization is not proposed or accepted, or, if proposed and accepted, is not confirmed, within such reasonable time as the judge may, upon cause shown and after considering any recommendation which has been filed by the commission, allow, may dismiss the proceeding; . . .

(d) Before creditors and stockholders of the debtor are asked finally to accept any plan of reorganization, the Interstate Commerce Commission shall after due notice hold a public hearing at which the debtor shall present its plan of reorganization and at which, also, such a plan may be presented by the trustee or trustees, or by or on behalf of creditors of the debtor, being not less than 10 per centum in amount of any class of creditors. Following such hearing, the commission shall render a report in which it shall recommend a plan of reorganization (which may be different from any which has been proposed) that will, in its opinion, be equitable, will not discriminate unfairly in favor of any class of creditors or stockholders, will be financially advisable, will meet with the requirements of subdivision (g) of this section, and will

the events entitling them to sell such collateral had occurred; that a sale of the collateral or any part thereof by the Reconstruction Finance Corporation or by the banks would be inconsistent with the purposes of § 77 and would hinder, impede, obstruct, delay, and, in effect, prevent the orderly preparation and consummation of a plan of reorganization; that the district court, under

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be compatible with the public interest. In such report the commission shall state fully the reasons for its conclusions, . . . Thereafter the plan of reorganization recommended by the commission shall be submitted in such manner as the commission may direct to the creditors and stockholders of the debtor for acceptance or rejection, together with the report or reports of the commission thereon; . . .

(e) A plan of reorganization shall not be finally approved by the commission until it has been accepted in writing and such acceptance has been filed in the proceeding by or on behalf of creditors holding two-thirds in amount of the claims of each class whose claims or interests would be affected by the plan, and by or on behalf of stockholders of the debtor holding two-thirds of the stock of each class: *Provided, however,* That if adequate provision is made in the plan for the protection of the interests, claims, and liens of any class of creditors or stockholders in the manner provided in clauses (5) and (6) of subdivision (g) of this section, then the acceptance of the plan by such class of creditor or stockholders shall not be requisite to the approval of the plan; . . .

(g) Upon such approval by the commission, and after hearing such objections as may be made to the approved plan, the judge shall confirm the plan if satisfied that . . . (6) the plan provides with respect to any class of creditors the acceptance of which is requisite to the confirmation of the plan, and who would not become bound by the plan under the provisions of subdivision (h) of this section, adequate protection for the realization by them of the value of their securities, liens, and claims, either (a) by the sale of such property subject to their liens, if any, or (b) by the sale free of such liens at not less than a fair upset price, and the transfer of such liens to the proceeds of such sale, or (c) by appraisal and payment in cash of either the value of such liens and claims or, at the objecting creditors' election, the value of the securities allotted to such liens and claims under the plan. Section 57, clause (h), of this Act shall be applicable to the appraisal of securities under this section, and the value of the unpaid balance shall be appraised as an unsecured claim; . . .

(h) Upon such confirmation the provisions of the plan shall be binding upon . . . (7) all secured creditors of each class of which two-thirds in amount shall have accepted the plan. . . .

(l) In addition to the provisions of section 11 of this Act for the staying of pending suits against the debtor, such suits shall be further stayed until after final decree [and] the judge may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree.

(n) In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and his property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed.

§ 77, had exclusive jurisdiction of the debtor and its property wherever located; that under paragraph 15 of § 2 of the Bankruptcy Act, the court had power to make such orders, issue such process and enter such judgments as might be necessary for the enforcement of the act; and that it was necessary for the enforcement of § 77 that the holders of the collateral be enjoined and restrained from selling or disposing of the same pending the preparation and consummation of a reorganization plan. Following these recitals, the Reconstruction Finance Corporation and the banks were restrained and enjoined from converting, selling or otherwise disposing of the collateral or any part thereof until further order of the court.

An appeal followed to the circuit court of appeals where, upon full consideration, the decree of the district court was affirmed. 72 F. (2d) 443. The case was brought here on certiorari. 293 U. S. —.

The questions which we are called upon to determine relate to the construction of § 77 in certain particulars; to its constitutionality; and to the powers of the district court which were here asserted and exercised.

First. The constitutional validity of the section in its general scope and application is not assailed, the subject being passed without discussion by any of the parties. Nevertheless, grave doubt has been expressed in respect of that question; and since the question is inherently fundamental, we deem it necessary to consider and dispose of it *in limine*—postponing, however, for later consideration the limited contention of the banks, in which the Reconstruction Finance Corporation seems not to join, that the due process clause of the Constitution is infringed by the special application made of § 77 in respect of the injunction.

Article I, sec. 8, cl. 4, of the federal Constitution vests Congress with the power "to establish . . . uniform laws on the subject of bankruptcies throughout the United States"; and the simple question is—does § 77 constitute a law on the subject of bankruptcies? While attempts have been made to formulate a distinction between bankruptcy and insolvency, it long has been settled that, within the meaning of the constitutional provision, the terms are convertible. As early as 1833, Mr. Justice Story said that whatever might have been the rule of the English law on the subject, Congress might pass an act authorizing a commission of bank-

ruptcy at the petition of the debtor; and that no distinction, practically or even theoretically, could be made between bankruptcies and insolvencies. 2 Story on the Constitution, 4th ed., § 1111. From the beginning, the tendency of legislation and of judicial interpretation has been uniformly in the direction of progressive liberalization in respect of the operation of the bankruptcy power.

The English law of bankruptcy, as it existed at the time of the adoption of the Constitution, was conceived wholly in the interest of the creditor and proceeded upon the assumption that the debtor was necessarily to be dealt with as an offender. Anything in the nature of voluntary bankruptcy was unknown to that system. The persons who were permitted to fall within the term "bankrupt" were limited to traders. But the notion that the framers of the Constitution, by the bankruptcy clause, intended to limit the power of Congress to the then-existing English law and practice upon the subject long since has been dispelled.

In *Waring* v. *Clarke,* 5 How. 441, this court held that the grant extending the judicial power to all cases of admiralty and maritime jurisdiction was not limited to, and was not to be interpreted by, what were cases of admiralty jurisdiction in England when the Constitution was adopted. Nor is the implied power of Congress over the subject arising from that jurisdictional clause and the general coefficient clause (Art. I, § 8, par. 18) of the Constitution to be thus confined. *Detroit Trust Co.* v. *The Barlum,* 293 U. S. 21, 42-43; *Panama R. R. Co.* v. *Johnson,* 264 U. S. 375, 385-387.

The same, it was said in the *Waring* case, is true in respect of other grants of power; and the bankruptcy clause was cited, p. 458, as an example. *In the Matter of Edward Klein,* decided by Mr. Justice Catron sitting on circuit and printed in 1 How. 277, it was definitely decided that the extent of the power of Congress was not limited to the principle upon which the English bankruptcy system was founded; and that decision was cited with approval by this court in *Hanover National Bank* v. *Moyses,* 186 U. S. 181, 186. Whether a clause in the Constitution is to be restricted by the rules of the English law as they existed when the Constitution was adopted depends upon the terms or the nature of the particular clause in question. Certainly, these rules have no such restrictive effect in respect of any constitutional grant of governmental power (*Waring* v. *Clarke, supra*), though they do, at least in some instances, operate restrictively in respect

of clauses of the Constitution which guarantee and safeguard the fundamental rights and liberties of the individual, the best examples of which, perhaps, are the Sixth and Seventh Amendments, which guarantee the right of trial by jury. That guaranty has always been construed to mean a trial in the mode and according to the settled rules of the common law, including all the essential elements recognized in this country and England when the Constitution was adopted. *Patton* v. *United States,* 281 U. S. 276, 288, and cases cited. See, also, *Callan* v. *Wilson,* 127 U. S. 540, 549; *Dimick* v. *Schiedt,* 293 U. S. 474, 476, 487; *West* v. *Gammon et al.,* 98 Fed. 426.

But, while it is true that the power of Congress under the bankruptcy clause is not to be limited by the English or Colonial law in force when the Constitution was adopted, it does not follow that the power has no limitations. Those limitations have never been explicitly defined, and any attempt to do so now would result in little more than a paraphrase of the language of the Constitution without advancing far toward its full meaning. Judge Cowen, in *Kunzler* v. *Kohaus,* 5 Hill. 317, 321, a decision which was approved by this court in *Hanover National Bank* v. *Moyses, supra,* said that the power was the same as though Congress had been authorized "to establish uniform laws on the subject of any person's general inability to pay his debts . . .". Probably the most satisfactory approach to the problem of interpretation here involved is to examine it in the light of the acts, and the history of the acts, of Congress which have from time to time been passed on the subject; for, like many other provisions of the Constitution, the nature of this power and the extent of it can best be fixed by the gradual process of historical and judicial "inclusion and exclusion." Compare *Davidson* v. *New Orleans,* 96 U. S. 97, 104; *Fed. Trade Comm.* v. *Raladam Co.,* 283 U. S. 643, 648.

The first act, that of 1800, so far ignored the English law, which was confined to traders, as to include bankers, brokers and underwriters as well. The act of 1841 added merchants; and other additions have been made by later acts until now practically all classes of persons and corporations are included. See *Friday* v. *Hall & Kaul Co.,* 216 U. S. 449, 454. The act of 1800 was one exclusively in the interest of the creditor. But the act of 1841 took what then must have been regarded as a radical step forward by conferring upon the debtor the right by voluntary petition to sur-

render his property, with some exceptions, and relieve himself of all future liability in respect of past debts. The act of 1800, like the English law, was conceived in the view that the bankrupt was dishonest; while the act of 1841 and the later acts proceeded upon the assumption that he might be honest but unfortunate. One of the primary purposes of these acts was to "relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes," and to give him "a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." *Local Loan Co.* v. *Hunt*, 292 U. S. 234, 244.

By the act of 1867, as amended by the act of 1874, c. 390, § 17, 18 Stat. 178, 182, the debtor for the first time was permitted, either before or after an adjudication in bankruptcy, to propose terms of composition to his creditors to become binding upon their acceptance by a designated majority and confirmation by the judge.

The fundamental and radically progressive nature of these extensions becomes apparent upon their mere statement; but all have been judicially approved or accepted as falling within the power conferred by the bankruptcy clause of the Constitution. Taken altogether, they demonstrate in a very striking way the capacity of the bankruptcy clause to meet new conditions as they have been disclosed as a result of the tremendous growth of business and development of human activities from 1800 to the present day. And these acts, far-reaching though they be, have not gone beyond the limit of congressional power; but rather have constituted extensions into a field whose boundaries may not yet be fully revealed.

Section 77 advances another step in the direction of liberalizing the law on the subject of bankruptcies. Railway corporations had been definitely excluded from the operation of the law in 1910 (c. 412, § 4, 36 Stat. 838, 839), probably because such corporations could not be liquidated in the ordinary way or by a distribution of assets. A railway is a unit; it can not be divided up and disposed of piecemeal like a stock of goods. It must be sold, if sold at all, as a unit and as a going concern. Its activities can not be halted because its continuous, uninterrupted operation is necessary in the public interest; and, for the preservation of that inter-

est, as well as for the protection of the various private interests involved, reorganization was evidently regarded as the most feasible solution whenever the corporation had become "insolvent or unable to meet its debts as they mature."

Equity receiverships, resorted to for that purpose, have never been satisfactory for many reasons. Partly, no doubt, in recognition of that situation, Congress, by § 77, added railroad corporations to the category of those who might have relief by legislation passed in virtue of the bankruptcy clause of the Constitution; and determined, after consideration, that such relief to be effectual should take the form of a reorganization, and should extend to cases where the corporation is "unable to meet its debts as they mature". The last phrase, since it is used as an alternative for the word "insolvent", obviously means something less than a condition of "bankruptcy" or "insolvency" as those words are employed in the law. See Bankruptcy Act, § 1 (15), which defines an "insolvent" as one whose assets, at a fair valuation, are not sufficient to pay his debts. It may be construed to include a debtor who, although unable to pay promptly, may be able to pay if time to do so be sufficiently extended. Obviously, § 77 does no more than follow the line of historical and progressive development projected by previous acts.

As outlined by that section, a plan of reorganization, when confirmed, cannot be distinguished in principle from the composition with creditors authorized by the act of 1867, as amended by the act of 1874. It is not necessary to the validity of either that the proceeding should result in an adjudication of bankruptcy. The constitutionality of the old provision for a composition is not open to doubt. *In re Reiman*, 20 Fed. Cas. 490, 496-497, cited with approval in *Hanover National Bank* v. *Moyses*, *supra*. That provision was there sustained upon the broad ground that the "subject of bankruptcies" was nothing less than "the subject of the relations between an insolvent or non-paying or fraudulent debtor, and his creditors, extending to his and their relief." That it was not necessary for the proceedings to be carried through in bankruptcy was held not to warrant the objection that the provision did not constitute a law on the subject of bankruptcies. The same view sustains the validity of § 77. Both contemplate an adjustment of a failing debtor's obligations; and although actual bank-

ruptcy may not supervene in either, they are none the less laws on the subject of bankruptcies. With due regard for consistency, the constitutional validity of the one cannot well be sustained and that of the other denied, as this court quite evidently recognized in *Canada Southern R. Co.* v. *Gebhard*, 109 U. S. 527.

That case involved an act of the Canadian Parliament by which railway companies unable to meet their engagements might unite with their creditors in the preparation of "schemes of arrangement" to be filed in the court of chancery. A scheme was deemed agreed to by the holders of mortgages, bonds, stocks, rent charges and preferred shares when assented to in writing by a designated majority of the holders of each class of security. The scheme when confirmed by the court became binding upon the non-assenting minority and this court held it to be thus binding upon bondholders who were citizens of the United States and who sued in courts of the United States to recover on their bonds. The "scheme" of the Canadian law was not unlike the "plan" of § 77. The significant part of the court's opinion, so far as the question now under discussion is concerned, is the following, which appears at p. 536:

"The confirmation and legalization of 'a scheme of arrangement' under such circumstances is no more than is done in bankruptcy when a 'composition' agreement with the bankrupt debtor, if assented to by the required majority of the creditors, is made binding on the non-assenting minority. In no just sense do such governmental regulations deprive a person of his property without due process of law. They simply require each individual to so conduct himself for the general good as not unnecessarily to injure another. Bankrupt laws have been in force in England for more than three centuries, and they had their origin in the Roman law. The Constitution expressly empowers the Congress of the United States to establish such laws. Every member of a political community must necessarily part with some of the rights which, as an individual, not affected by his relation to others, he might have retained. Such concessions make up the consideration he gives for the obligation of the body politic to protect him in life, liberty, and property. Bankrupt laws, whatever may be the form they assume, are of that character."

After pointing out that the Canadian law was in accordance with the policy of the English and Canadian governments in dealing with embarrassed and insolvent railway companies; that it took the place in England and Canada of foreclosure sales in the United

States "which in general accomplish substantially the same result with more expense and greater delay", the court added (p. 539):

". . . It is in entire harmony with the spirit of bankrupt laws, the binding force of which, upon those who are subject to the jurisdiction, is recognized by all civilized nations. It is not in conflict with the Constitution of the United States, which, although prohibiting States from passing laws impairing the obligation of contracts, allows Congress 'to establish . . . uniform laws on the subject of bankruptcy throughout the United States.' Unless all parties in interest, wherever they reside, can be bound by the arrangement which it is sought to have legalized the scheme may fail."

It is unnecessary to consider the criticism, sometimes made, that these excerpts are *dicta* merely, since we are of opinion that they are sound in principle.

It follows, from what has now been said, that § 77, in its general scope and aim, is within the power conferred by the bankruptcy clause of the Constitution; and we so hold.

Second. Under § 77 does the bankruptcy court have authority to enjoin the sale of the collateral here in question if a sale would so hinder, obstruct and delay the preparation and consummation of a plan of reorganization as probably to prevent it? By § 2 of the Bankruptcy Act (U. S. C. Title 11, § 11), courts of bankruptcy are invested "with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings." They are essentially courts of equity, and their proceedings inherently proceedings in equity, the words "at law" probably having been inserted only with regard to clause (4) of § 2, which confers authority to arraign, try, and punish bankrupts and others for violations of the act. *Local Loan Co.* v. *Hunt*, 292 U. S. 234, 240. Their adjudications and orders constitute in all essential particulars decrees in equity. Idem, 241. The power to issue an injunction when necessary to prevent the defeat or impairment of its jurisdiction is, therefore, inherent in a court of bankruptcy, as it is in a duly established court of equity. Section 262 of the Judicial Code, which authorizes the United States courts "to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions" recognizes and declares the principle. An example of its application is found in *Kline* v. *Burke Constr. Co.*, 260 U. S. 226, 229, where we held that a federal court, having first acquired jurisdic-

tion of the subject matter, could enjoin the parties from proceeding in a state court of concurrent jurisdiction "where the effect of the action would be to defeat or impair the jurisdiction of the federal court." An injunction may be issued in such circumstances for the purpose of protecting and preserving the jurisdiction of the court "until the object of the suit is accomplished and complete justice done between the parties". *Looney* v. *Eastern Texas R. R. Co.*, 247 U. S. 214, 221.

Moreover, by § 2 (15) of the Bankruptcy Act (U. S. C., Title 11, § 11), courts of bankruptcy are invested with such authority in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, including the power to "make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act". It may be that in an ordinary bankruptcy proceeding the issue of an injunction in the circumstances here presented would not be sustained. As to that it is not necessary to express an opinion. But a proceeding under § 77 is not an ordinary proceeding in bankruptcy. It is a special proceeeding which seeks only to bring about a reorganization, if a satisfactory plan to that end can be devised. And to prevent the attainment of that object is to defeat the very end the accomplishment of which was the sole aim of the section, and thereby to render its provisions futile.

The bankruptcy court, in granting the injunction, was well within its power, either as a virtual court of equity, or under the broad provisions of § 2 (15) of the Bankruptcy Act or of § 262 of the Judicial Code.

The injunction does not infringe § 67 (d), U. S. C. Title 11, § 107 (d). The substance of that provision is that *bona fide* liens shall not be affected by anything contained in the Bankruptcy Act. The injunction here in no way impairs the lien, or disturbs the preferred rank of the pledgees. It does no more than suspend the enforcement of the lien by a sale of the collateral pending further action. It may be, as suggested, that during the period of restraint the collateral will decline in value; but the same may be said in respect of an injunction against the sale of real estate upon foreclosure of a mortgage; and such an injunction may issue in an ordinary proceeding in bankruptcy. *Straton* v. *New*, 283 U. S.

318, 321, and cases cited. A claim that injurious consequences will result to the pledgee or the mortgagee may not, of course, be disregarded by the district court; but it presents a question addressed not to the power of the court but to its discretion—a matter not subject to the interference of an appellate court unless such discretion be improvidently exercised. So far as constitutional power is concerned, there is no difference between an injunction restraining the enforcement of a real-estate mortgage and one restraining the enforcement of a pledge by the sale of collateral security. Such differences as exist affect not the power but the propriety of its exercise—that is to say, the discretion of the court. Such an injunction, as just indicated, is within the contemplation of § 77, and we need not inquire whether it would be admissible under the act in force prior to the adoption of that section. Compare *Straton* v. *New, supra.* Nor does § 57 (h), 11 U. S. C. § 93 (h), also invoked by petitioners, have any pertinent application to the question under discussion in the light of the provisions, purpose and aim of § 77.

Petitioners urge that the injunction is precluded by a consideration of subdivision (1) of § 77, which confers authority upon the court to enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree. The point made is that the granting of this express power to enjoin *judicial* proceedings brought to enforce liens negatives the authority to stay the enforcement of liens by *non-judicial* proceedings, in accordance with the maxim *expressio unius est exclusio alterius.* But clause (15) of § 2 is still in the act; and it would be an unwarranted use of the maxim, which is only an aid to construction, to apply it in such a way as to work a destruction, *pro tanto,* not only of that clause, but of § 262, Judicial Code, and of the general principle upon which both are based.

Third. It is evident that the effect here wrought by the menace of impending sales of the collateral would seriously embarrass and probably prevent the formulation and consummation of a plan of reorganization. Both courts below so found. The findings of the district court are in the form of recitals in the order, but are nevertheless in substance and in effect findings of fact. The circuit court of appeals approved these findings, and added that without some control over the disposition of the collateral, "the

presentation of a satisfactory plan of reorganization might as well be abandoned." These concurrent findings of the two courts, as this court has often held, should be accepted as conclusive unless clearly erroneous. *United States* v. *Commercial Credit Co.*, 286 U. S. 63, 67; *Stuart* v. *Hayden*, 169 U. S. 1, 14; *Dun* v. *Lumbermen's Credit Ass'n*, 209 U. S. 20, 23-24.

We are not impressed with the attempt of petitioners to show that the record entirely fails to justify the conclusion of the courts below in that regard. It must be borne in mind that, in addition to the collateral aggregating more than $54,000,000, held by petitioners, there was outstanding additional collateral pledged as security in the sum of over $145,000,000, bringing the total up to approximately $200,000,000, a sum equal to nearly half of the capital then issued and in the hands of the public. At the time the injunction was applied for, there was danger that the noteholders would claim that the right of sale under the terms of the collateral notes had been brought into existence; and with the pendency of the reorganization proceedings and the suspension of the payment of interest, it well cannot be doubted that there also was danger that the noteholders would proceed to exercise their rights of sale under the collateral notes. Such action on the part of these noteholders might well precipitate similar action by other holders of pledged collateral.

It is necessary, under § 77, first to prepare a plan and then to submit it, perhaps with other suggested plans, to the Interstate Commerce Commission for consideration and recommendation. The plan having been assented to by two-thirds of each class of the stockholders and creditors and approved by the commission, must then, and only then, be submitted for approval to the district court. In the reorganization of a great railroad system like that here concerned, these various steps call for a degree of consideration and an extent of detailed work almost beyond the power of appreciation. The sale of the collateral securities from time to time during the progress of this consideration and work well might require such changes of detail in the plan, entailing new and perhaps difficult reconcilements of views among many and conflicting interests, as to force an abandonment of the proceeding.

It must be apparent, if we consider only the impressive facts set forth in the forepart of this opinion in respect of the extensive

operations of the railway company and its subsidiaries, the extent, multiplicity and variety of their obligations, the complicated nature of their capital structure, the great volume of their securities held as collateral by many and widely-separated creditors, and other circumstances, that without the maintenance of the *status quo* for a reasonable length of time no satisfactory plan could be worked out. The preparation of any plan the important details of which could survive the changes in, and the consequent fluctuation and disturbance of, the financial structure, brought about by recurring sales of collateral, would seem to be a practical impossibility. Under all the circumstances, we are of opinion that the district court properly exercised its discretion in favor of respondents.

Fourth. We find no substance in the contention of the petitioning banks that § 77, as applied by the court below to permit an injunction restraining the sale of the collateral, violates the Fifth Amendment. The basis of the contention is that since, by the terms of the pledge, the pledgors are empowered on default to sell the collateral at such times as they may select, § 77, as thus applied, deprives them of their property—that is to say, impairs or destroys their contractual rights—without due process of law.

The Constitution, as it many times has been pointed out, does not in terms prohibit Congress from impairing the obligation of contracts as it does the states. But as far back as *Calder* v. *Bull*, 3 Dall. 386, 388, it was said that among other acts which Congress could not pass without exceeding its authority was "a law that destroys or impairs the lawful private contracts of citizens". The broad reach of that statement has been restricted (*Legal Tender Cases*, 12 Wall. 457, 549-550); but the principle which it includes has never been repudiated, although the extent to which it may be carried has not been definitely fixed. Speaking generally, it may be said that Congress, while without power to impair the obligation of contracts by laws acting directly and independently to that end, undeniably, has authority to pass legislation pertinent to any of the powers conferred by the Constitution however it may operate collaterally or incidentally to impair or destroy the obligation of private contracts. *Legal Tender Cases*, *supra*; *Louisville & Nashville R. R.* v. *Mottley*, 219 U. S. 467, 480-482, 484; *Highland* v. *Russell Car Co.*, 279 U. S. 253, 261. And under the express power to pass uniform laws on the subject of bankruptcies,

the legislation is valid though drawn with the direct aim and effect of relieving insolvent persons in whole or in part from the payment of their debts. See *Hanover National Bank* v. *Moyses, supra,* at p. 188. So much necessarily results from the nature of the power, and this must have been within the contemplation of the framers of the Constitution when the power was granted.

The injunction here goes no further than to delay the enforcement of the contract. It affects only the remedy. As already appears, this court has upheld the power of a court of bankruptcy to stay the enforcement of the remedy under a real-estate mortgage; and the remedy under a pledge, so far as constitutional power is here concerned, presents a situation strictly analogous in character.

Fifth. It is next contended that the court was without power to issue the injunction in a summary proceeding. Obviously, an application for an injunction against the immediate enforcement of a remedy is not the assertion of an adverse claim. The bonds deposited as collateral were not in the hands of purchasers, but in the hands of creditors as security. That the equity which the debtor retained was a property interest, was not and could not be disputed by the creditors; nor was the claim of the creditors in respect of their rights in the collateral security or the rank of their liens questioned by the debtor. In short, no adverse claim was brought forward by either of the parties to the controversy. The only question was in respect of the creditors' remedy; and the sole point is as to the authority of the bankruptcy court to delay for a reasonable time an interference with the reorganization proceeding which would result from an immediate sale of the collateral. The court below dealt adequately with the situation, and its conclusions find ample support in the decisions. See, for example, *In re Purkett, Douglas & Co.,* 50 F. (2d) 435, 438; *John Matthews, Inc.* v. *Knickerbocker Trust Co.,* 192 Fed. 557; *Allebach* v. *Thomas,* 16 F. (2d) 853.

The Reconstruction Finance Corporation raised the question in the district court by a demurrer, asserting that the allegations of the debtor's petition were insufficient. But in a summary proceeding, as the term itself implies, the merits of the controversy are determined without the formality in respect of pleadings which is required in actions at law or suits in equity. In such a proceeding we see no reason why the allegations of the petition may not be helped out by timely affidavits. Doubt has been expressed

by lower federal courts as to the propriety of a demurrer in such a proceeding. *In the matter of Snelling*, 202 Fed. 258, Judge Morton aptly said, "Summary procedure implies, I think, a single hearing . . . at which the merits of the controversy are investigated and decided, without much regard to the formal pleadings." See, also, *In re Rockford Produce & Sales Co.*, 275 Fed. 811, 813. In any event, we think, as against demurrer, conceding its propriety, the petition is sufficient. Pertinent allegations are epitomized in the early part of this opinion.

The contention of the petitioners that they were not given sufficient notice or a full opportunity to be heard is quite evidently without merit. They had ten days' previous notice by registered mail of the application for the injunction. All appeared specially and participated in the hearings, for which ample time was allowed. Briefs were filed on both sides, and additional memoranda were presented to the court by the Reconstruction Finance Corporation and one of the banks.

Sixth. The territorial jurisdiction of the district court is assailed by three of the banks on the ground that they were located outside the Northern District of Illinois. The contention is that the district court was without power to issue its process for service outside the district. Section 77 (a) provides that after the petition of the railroad company is approved, "the court in which such order approving the petition is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located". Congress may authorize the civil process of a federal district court to be served upon persons in any other district. *Toland* v. *Sprague*, 12 Pet. 300, 328; *United States* v. *Congress Const'n Co.*, 222 U. S. 199, 203-204; *First Natl. Bank* v. *Williams*, 252 U. S. 504, 510. There are other cases to the same effect, but it is unnecessary to cite them. Section 77 deals with railway corporations whose lines and activities are not confined to a single district or a single state, but in numerous instances reach into many districts and many states. The lines of the Rock Island system extend into 20 districts and 14 states. Jurisdiction over reorganization proceedings, however extensive the railway lines may be, is conferred upon a single district court. The usefulness of the section would be greatly minimized and in some instances

destroyed if that court were powerless to send its process into any state when necessary to effectuate the purposes of the law. As has already been shown, the equity in the collateral remaining in the railroad company is property; and over this property, wherever located, the federal district court is given exclusive jurisdiction by the precise language of § 77, just quoted. As a necessary consequence of that jurisdiction, the court must have the power to preserve and safeguard the property for the benefit of the trust estate so far as that is compatible with the rights of the pledgees. Jurisdiction over the property wherever located carries with it jurisdiction to enjoin, in a proper case, interferences with the property, and this includes, by necessary inference, the power to send process to that end for service upon the persons to be enjoined wherever they may be found within the United States.

It is said that the words "wherever located" mean wherever located *within the district*. But considering the nature of the property involved, the number of districts and states over which it is distributed, and the manifest policy of avoiding ancillary administration as far as possible, a construction so narrow must be rejected as at war with the whole spirit and purpose of the law.

Seventh. The Reconstruction Finance Corporation contends that §§ 77 and 2 (15) of the Bankruptcy Act must be limited by the provisions of § 5 of the Reconstruction Finance Corporation Act (c. 8, 47 Stat. 5), which empowers the corporation to take over and *liquidate* collateral accepted by it as security. The Reconstruction Finance Corporation Act creates a corporation and vests it with designated powers. Its entire stock is subscribed by the government, but it is none the less a corporation, limited by its charter and by the general law. The act does not give it greater rights as to the enforcement of its outstanding credits than are enjoyed by other persons or corporations in the event of proceedings under the Bankruptcy Act. The provisions and principles of enforcement of the Bankruptcy Act, including § 77, are binding upon the Reconstruction Finance Corporation, in the absence of some pertinent statutory exception, as they are upon other corporations. We are unable to find such an exception in the authority to liquidate collateral held as security — an authority enjoyed in common with any other lender of money who has taken the trouble to provide for it in his contract with the borrower.

What is given to the lender in either event is a remedy which, when subject to the control of the bankruptcy court under given circumstances in the one case, is equally so in the other.

Finally. Petitioners insist, with much force, that the injunction, granted in November, 1933, and still operative, is likely, if continued, to result in irreparable injury. We do not interpret the order, as suggested by the Reconstruction Finance Corporation, as continuing the injunction in force until a plan of reorganization is effected or the proceeding under § 77 dismissed. On the contrary, we understand that the injunction may at any time be dissolved upon application and proper notice and showing. It contemplates, as we have already suggested, only reasonable delay.

It is true that no plan has yet been consummated; and, so far as the record shows, none has been prepared or is in the course of preparation. If this long delay were without adequate excuse, the retention of the injunction for the long period which has intervened since it was granted could not be justified. But the delay is obviously due to the many doubts and uncertainties arising from the present litigation. Until they are finally resolved, the consummation, or even the preparation, of any definite plan is plainly impracticable. With those doubts and uncertainties now removed, the proceeding should go forward to completion without further delay, or be dismissed.

The delay and expense incident to railroad receiverships and foreclosure sales constituted, probably, the chief reasons which induced the passage of § 77; and to permit the perpetuation of either of these evils under this new legislation would be subversive of the spirit in which it was conceived and adopted. Not only are those who institute the proceeding and those who carry it forward bound to exercise the highest degree of diligence, but it is the duty of the court and of the Interstate Commerce Commission to see that they do. Proceedings of this character, involving public and private interests of such magnitude, should, so far as practicable, be given the right of way both by the court and by the commission, to the end that they may be speedily determined.

Decree affirmed.

Mr. Justice BRANDEIS took no part in the decision of this case.